

IN RE THE INCORPORATION OF THE
TOWN OF PEWAUKEE, WAUKESHA COUNTY,
WISCONSIN AS A CITY OF THE FOURTH
CLASS:

BRENT REDFORD, Representative of
the Petitioners for the
Incorporation of the City of
Pewaukee City, and said Petitioners

Petitioners

vs.

CITY OF WAUKESHA,
PETERBILT WISCONSIN;
AND JOHN E. KUENZI,

Intervenors

CASE No. 90-CV-1588

DETERMINATION OF THE DEPARTMENT OF DEVELOPMENT, May 31, 1991.

It is the function of the Department of Development to prepare findings and determine whether the territory petitioned for incorporation meets the applicable standards prescribed in Section 66.016, Stats. Having completed that task, the analysis and findings are attached.

In summary, it is the DETERMINATION OF THE DEPARTMENT OF DEVELOPMENT that when considering the petition submitted to the Circuit Court by the petitioners that:

STANDARD 1 (a) is not met;

STANDARD 1 (b) is not met;

STANDARD 2 (a) is met;

STANDARD 2 (b) is met;

STANDARD 2 (c) is not applicable;

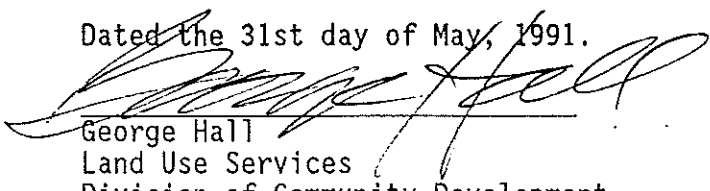
STANDARD 2 (d) is not met.

All of the above is discussed in greater detail in the body of the DETERMINATION.

THE DETERMINATION OF THE DEPARTMENT as prescribed by s. 66.014 (9) (e) 3, Stats., is:

Having failed to meet one or more applicable standards for incorporation, the department finds that the petition shall be dismissed.

Dated the 31st day of May, 1991.


George Hall
Land Use Services
Division of Community Development
Wisconsin Department of Development

cc: Timothy P. Garrity, Attorney
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Patricia E. Madden, Clerk, County of Waukesha
Cynthia S. Ernst, Clerk of Courts
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Patricia A. Struve, Clerk, Village of Menomonee Falls
Sharon Lee Thims, Clerk, Town of Waukesha
Barbara A. Whitmore, Clerk, Town of Genesee
June Nirschl, Clerk, Town of Delafield
Jeanne Ann Frederickson, Clerk, Town of Merton
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Barbara A. Hartung, Clerk, Town of Brookfield
Armando Bras, Administrator, Division of Community Development,
Wisconsin Department of Development
Dennis Fay, General Counsel, Wisconsin Department of Development
F. Thomas Creeron, III, Wisconsin Department of Justice

INTRODUCTION

The following analysis and findings relate to the "Standards to be applied by the Department of Development," as found in s. 66.016, Stats.

SECTION 1 (a) "CHARACTERISTICS OF THE TERRITORY."

STANDARD TO BE APPLIED

"The entire territory of the proposed village or city shall be reasonably homogenous and compact, taking into consideration natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries, boundaries of school districts, shopping and social customs."

ANALYSIS

Natural Boundaries

Pewaukee Lake, situated in sections 7, 8, 17, and 18, and located in a pre-glacial erosion valley blocked by glacial drift and a man-made impoundment, is the only lake in the township, and forms a physical barrier with respect to urban development and transportation routes in the northwest corner of the town.

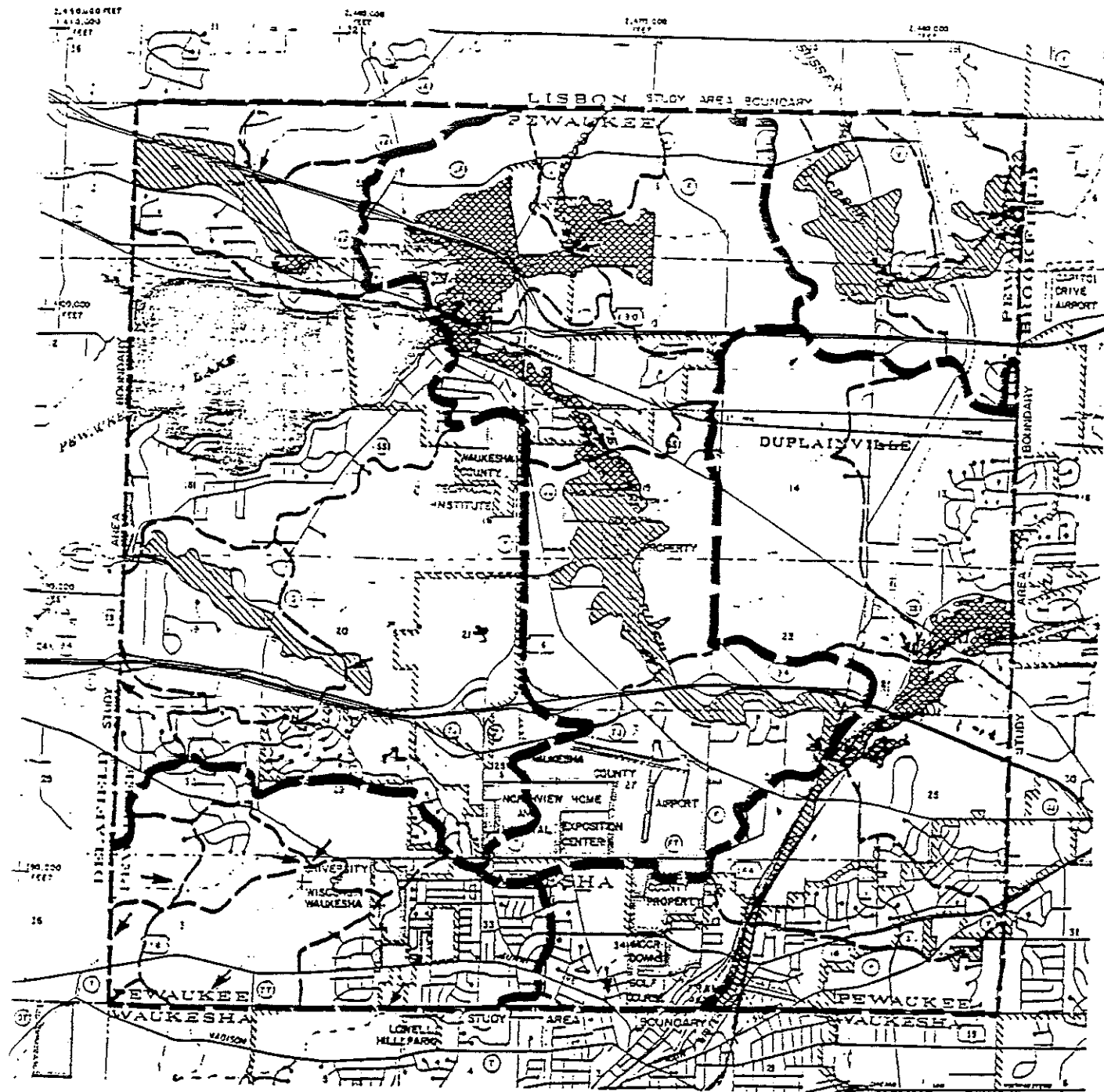
Natural Drainage Basin

The survey township of Pewaukee is located entirely within the upper Fox River watershed. The subwatershed boundaries found on Map 1 further divide surface water drainage into several subwatersheds: Pebble Creek, which drains the lower southwest corner of the town; the Pewaukee and Fox Rivers (both perennial water courses); and Sussex Creek (an intermittent stream which lies in the far northeast corner of the township.

Map 1 delineates lowlands adjacent to the perennial and intermittent streams and rivers, which are statistically subject to recurrent flooding at 100-year intervals. These flood-prone lands were identified through two SEWRPC studies, A Comprehensive Plan for the Fox River Watershed, and Floodland Information Report for the Pewaukee River (Southeastern Wisconsin Regional Planning Commission, hereinafter identified as SEWRPC, Planning Reports 12 and 9 respectively). Lands subject to the 100-year flood plain are encompassed by the Waukesha County Shoreland and Floodland Protection Zoning Ordinance map, plotted on a photogrammetric base map comprised of 9 sheets, adopted by the Waukesha County Board of Supervisors on July 22, 1986 and approved by WDNR, August 13, 1986. The floodlands mapped by SEWRPC cover approximately 2,006 acres (9 percent) of the survey township. Approximately 86 percent of this area is within the area proposed for incorporation, about 12 percent within the Village of Pewaukee, and 2 percent within the City of Waukesha. Adding the additional land covered by the county's Shoreland Floodland Ordinance slightly increases the total acreage of protected shoreland and floodplain.

Map 1

SELECTED SURFACE DRAINAGE AND FLOODLAND FEATURES IN THE JOINT PEWAUKEE STUDY AREA: 1980



LEGEND

- LAKE OR POND
- PERENNIAL ARROYO OR STREAM
- 100-YEAR RECURRENCE INTERVAL FLOODPLAINS AS DELINEATED BY SEWRPC
- 100-YEAR RECURRENCE INTERVAL FLOODPLAINS AS DELINEATED BY THE WAUKESHA COUNTY PARK AND PLANNING COMMISSION
- WATERSHED BOUNDARY
- SUBBASIN BOUNDARY
- DIRECTION OF SURFACE DRAINAGE FLOW

Source: SEWRPC.

The flood prone areas of the survey township are further described through WDNR's Wisconsin Wetland Inventory program. The Wisconsin Wetland Inventory, Township 7N, R9E, Waukesha County, Wisconsin map -- not reproduced - shows those wetlands inventoried by the WDNR using the U.S. Fish and Wildlife Service "Classification of Wetland and Deepwater Habitats of the U.S.," soils survey maps, precipitation records and other information. Inspection of the inventory for the survey township of Pewaukee suggests that the predominant wetland types which all occur on wet-palustrine soils (E1 or E2K) are a persistent, emerging wet meadow followed by a lesser amount of deciduous forest, and deciduous, shrub-covered meadows. Wetlands, environmental corridors, isolated natural areas, and related ecosystems are further discussed in section 1 (b), Territory Beyond the Core Square Mile, beginning on page 18.

Soil Conditions

Pewaukee survey township soil and surface features result from the ground moraine of the Lake Michigan lobe of the final, or Wisconsin stage, of glaciation that began 30,000 years ago, and ended about 11,000 years ago. Examples of glacial landforms are the kettles (kettle holes and associated steep ridges and drainage ways) found in the southwest corner of the town; the drumlins -- elongated cigar shaped ridges (from a few hundred feet to over 2000 feet in length); and large level or gently sloping "flats" where glacial run off has deposited sand, gravel and soil which, in some cases, trapped water to form lakes, marshes or bogs.

Forty-two percent of the survey township is covered by soils portrayed in Map 2 as having severe or very severe limitations for development served by on-site private septic treatment systems. Map 3 describes not only areas which are wetlands and/or floodplains, that are protected from development by the Waukesha County Shoreland and Floodplain Zoning Ordinance, but also those soils which are either too shallow or too high to permit proper septic tank operation, or which create building foundation structural problems that may be economically difficult to overcome.

Environmental corridors designated within the Town of Pewaukee also take into account problematic soil conditions, physical slope, wetlands, and flood prone areas, as previously discussed, are reflected in the Town Zoning Ordinance and Map (Exhibit 43j) which is administered to protect the natural environment of the area proposed for incorporation.

Present and Potential Transportation Systems

All areas of the Town of Pewaukee are accessible by a road system that includes every class of public road ranging from freeways to residential streets and rural roads. (See Map 3.) Interstate Highway 94 crosses the town in an east/west direction, dividing the lower one-third of the town from the upper two-thirds (approximately 6 square miles of the Town of Pewaukee lie south of I-94, while the remaining approximate 19 square miles lie to the north of I-94). While I-94 is a limited access interstate freeway, there are

Map 2

SOIL LIMITATIONS FOR RESIDENTIAL DEVELOPMENT ON LOTS ONE ACRE
OR MORE IN SIZE SERVED BY ONSITE SOIL ABSORPTION SEWAGE
DISPOSAL SYSTEMS IN THE JOINT PEWAUKEE STUDY AREA



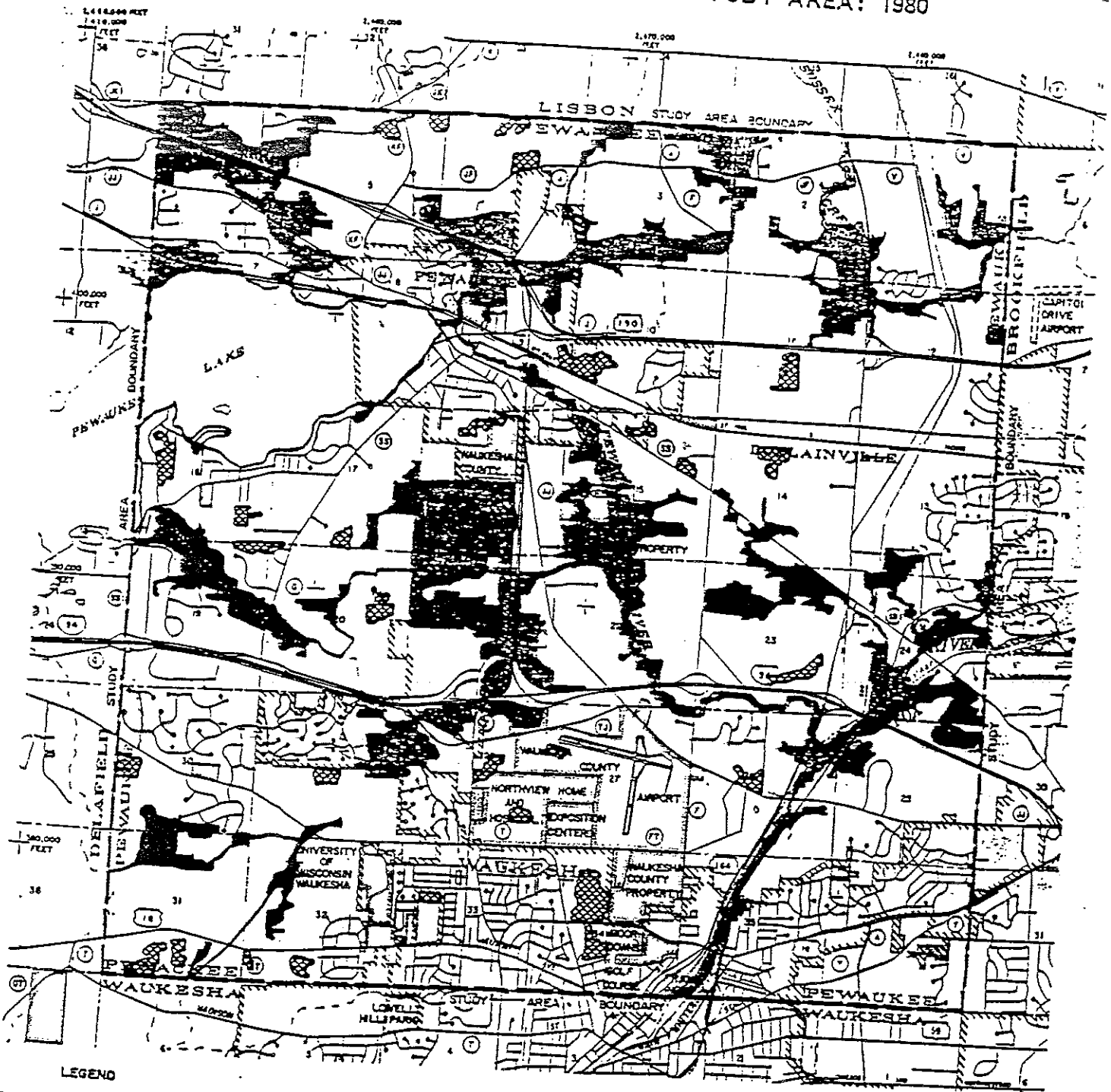
LEGEND

AREAS COVERED BY SOILS HAVING SEVERE OR VERY SEVERE LIMITATIONS

Source: SEWRPC.

Map 3

ENVIRONMENTAL CORRIDORS AND ISOLATED NATURAL AREAS IN THE JOINT PEWAUKEE STUDY AREA: 1980



LEGEND

- PRIMARY ENVIRONMENTAL CORRIDOR
- SECONDARY ENVIRONMENTAL CORRIDOR
- ISOLATED NATURAL AREA

Source: SEWRPC.

six interchanges on I-94 and two bridge crossovers which serve all of the major north/south transportation corridors within the town.

A second freeway, State Trunk Highway (STH) 16, branches off I-94 to run north through the Village of Pewaukee, and then northwest, exiting the town in Section 6, north of Pewaukee Lake. There are three interchanges (in addition to the I-94 interchange) providing points of access to the Village of Pewaukee as well as the town. Interchanges on this section of freeway provide ready cross-highway accessibility, with the possible exception of the 1.8 mile stretch between I-94 and the interchange nearest to the Waukesha County Technical Institute. STH "16" and STH "190" along with CTH "JJ" serve to link the town lands in sections 4,5 and 6 with the principal area of the town.

The classified road network (classified for state transportation aids) within the Town of Pewaukee includes 5.26 miles of Interstate Highway 94; 15.26 miles of state trunk highways (STH 16, 18, 164 and 190); and 24.83 miles of county highways (CTH "FT", "G", "J", "JJ", "KF", "M", "SS", "T" and "TJ"). In addition, there are 67.43 miles of local streets for a total of 112.78 miles of streets and highways. Five and four tenths miles of local streets have been added since 1987 as part of local subdivisions platted since 1986. Local streets now amount to 60 percent of total street mileage in the town. There has been a 5 percent increase in total street and highway mileage since 1987.

A comparison of DOT plat maps for the town for 1987 and 1989 indicates only two changes for state and county highways. First, a segment of STH 164 in sections 11, 14 and 23 is now a divided highway. Second, in Section 36, STH 164 has shifted from county to state jurisdiction. (See Exhibit 1.e.) Existing or immediately pending county and state trunk highway improvements within the Town of Pewaukee are summarized in the EA at pages 9 to 11.

The high dependency within the town on state and county highways is shown for example by the large number of homes and businesses located along the county highways.¹ According to County Park and Planning Commission staff, such a situation is common within towns of Waukesha County. Waukesha County has recently authorized use of special assessments on property owners directly abutting county trunk highways. In contrast to what was observed by the department in 1988, commercial and residential development is occurring throughout much of the town due to the access afforded by the multi-jurisdictional transportation network. Most if not all of the recent residential and commercial development obtains access to the state and county trunk highway network through the new additions to the town road system previously described.

¹ As an example, there are four east-west "local" roads which serve to link centers of population within the town: Lindsay Road, connecting CTH "KF" with Duplainville Road and STH "164" through survey township sections 1-5; Green Road, connecting CTH "J" with Springdale Road -- the town line, traversing through sections 11 and 12; Golf Road, a frontage road paralleling I-94 in sections 19-21; and Northview Road, from the town line in survey township section 30, to the City of Waukesha boundary section 29.

Rail facilities

The former Chicago, Minneapolis, St. Paul and Pacific Railroad (C. M. St. P. & P. RR, also known as the Milwaukee Road) had two routes through the area. A dual track main line runs east/west along the north shore of Pewaukee Lake through the Village of Pewaukee, parallel to and just south of Green Road. This route was acquired by the Soo Line Railroad, which now uses it as its main line to Minneapolis (and which is also used by AmTrack passenger service). The second route extends northeasterly from the City of Waukesha just south of North Avenue (C.T.H. "M"), and is now owned by the State of Wisconsin.

Wisconsin Central (former Soo Line Railroad) tracks also run north/south through the Town of Pewaukee roughly parallel to S.T.H. 164 in the eastern portion of the town.

Airport

Crites Field, the Waukesha County Airport, is located in Section 27, Town of Pewaukee, south of I-94. It is a general aviation field capable of handling multi-engine aircraft on 4,000 foot north/south and east/west runways. This airport is further described in A Regional Airport System Plan for Southeastern Wisconsin: 2010 (May, 1987), prepared by SEWRPC, the designated agency responsible for airport planning in Southeastern Wisconsin.

The "objectionable" noise contour of Crites Field extends into two areas proposed to remain as farmland and includes a significant amount of land planned as medium density residential in the NW 1/4 of section 26, the NE 1/4 of section 27 and the SW 1/4 of section 26. The 1987 SEWRPC Airport Plan at p.27, recommended use of nonstandard air traffic operational patterns at Crites Airport to minimize adverse impacts on adjacent residential development, but there is no evidence that this has taken place. (Exhibit 32c). In 1989, east-west Runway 10/28 at Crites Field was extended 1650 feet west in order to accommodate business and corporate aircraft of prospective corporations that "wish to operate their aircraft close to their corporate offices."

Mass transit

The SEWRPC Transportation Improvement Plan identified one subsidized transit service for Pewaukee and other unincorporated areas of Waukesha County. Ride Line operates Monday through Friday, from 8 a.m. to 4:30 p.m. on a 48-hour advanced reservation method. Eligible users for Ride Line service are those Waukesha County residents who are 60 years or older, or handicapped and 18 years or older.

A number of special needs transit service providers such as American Red Cross/RSVP, Dairyland Buses Inc., Kettle Moraine Ambulance Service, La Casa de Esperanza, Waukesha County Department of Aging Ride-Line and Waukesha Metrolife all report increases in demand for their services. Metrolife

estimates a 60% increase in demand in 1989 over 1988. Annual miles driven by American Red Cross service drivers increased 45% in 1990.

The City of Waukesha's Metro Transit service in 1990, extends north, along Bus Route No.9, into the Town of Pewaukee along STH 16 to the Waukesha County Technical Institute, as well as east through the town to the border with the City of Brookfield, to CTH "JJ", circling Waukesha County Airport. The east route, No.1, stops at the Westbrook Shopping Center and terminates at the Goerkes Corner Park and Ride facility at Barker Rd.

Previous Political Boundaries

The Town of Pewaukee shares borders with the towns of Brookfield, Lisbon, Merton, Delafield, Genesee and Waukesha. Contiguous incorporated municipalities include the Village of Pewaukee, City of Waukesha, Village of Menomonee Falls, City of Brookfield, and until recently, the City of New Berlin, where adjoining Town of Pewaukee territory (the Hidden Valley Subdivision and the Klein Farm in the SE 1/4 of section 36) was detached from the Town of Pewaukee and attached to the Town of Brookfield through actions of the respective town boards in May and June of 1990. These actions eliminated an isolated area of the Town of Pewaukee, which had been separated from the remainder of the town by the City of Waukesha. Of the adjoining incorporated municipalities, only the Village of Pewaukee and the City of Waukesha have annexed territory from the town.

Since the 1988 consolidation determination, the town and village have signed two boundary agreements. The effect of the first agreement is shown in Exhibit A dated 5/7/90 attached to the Memo in Support of Petition for Incorporation, dated 5/29/90. The first agreement delineated lands to be transferred immediately to the Village of Pewaukee, lands to be annexed at the request of the landowner within a specific time frame, and other lands adjoining the village the disposition of which was not determined, where landowners would presumably be free to annex at any time. A subsequent annexation petition for the "Bennett" properties lying within this latter area, in sections 3 and 4, was accepted by the village, and immediately became the subject of a lawsuit filed by the town. As a result of the latest agreement (Exhibit 46) signed between the village and the town, this lawsuit was dropped, and an accord reached as to how those town lands remaining in sections 4-7 would be served by sanitary sewer. At the conclusion of the second agreement (see Exhibit 46), the village also petitioned the court to withdraw as an intervenor in this incorporation proceeding, and indicated its support for incorporation of the town.

The town has sought to reach a similar boundary agreement with the City of Waukesha using s. 66.027, Stats. (see Order, Case No. 89-CV-2143, in Memorandum of Law in Support of Petition for Incorporation, at A-49; and Stipulation, Case No. 89-CV-2143, also in Memorandum..., at A-51.) The boundary agreement was vacated following the failed referendum held in the territory to be transferred. Since the referendum, the city and town have been unable to decide upon boundary changes. (See letter from town to city, dated 12/21/90.) As a consequence, annexations accepted by the City of

Waukesha in section 29, 30, 31 and 32 remain in litigation. Had the boundary agreement been accepted by the resident electors, all remaining town lands in sections 29, 31 and 32 would have been transferred to the city, along with isolated town lands in section 33, in addition to other lands in sections 19, 20, the county lands in section 27 and 28, and adjacent lands in sections 22 and 26. (See Boundary Agreement, Exhibit "B.")

In 1988, the department determined that irregular boundaries in the southwest corner of the town detracted from a finding of compactness. Since then, additional annexations have served to consolidate the area in question, but additional new annexations, cited in the previous paragraph, have isolated town lands in sections 29, 32, and 33 from the remainder of the town.

The town in its Reply Brief, at p. 2, argues that because the department reviewed these annexations and found them to be "in the public interest," the department "should be constrained from determining that the territory is not reasonably compact." The Reply Brief fails to consider two important aspects of the department's advisory responsibility under s. 66.021 (11), Stats. First, the department is not charged with the responsibility and does not determine that an annexation is "in the public interest." Rather, the department may make a negative finding that a proposed annexation is "against the public interest," a finding which, because it is advisory, does not restrict a city or village from adopting an annexation ordinance. In order to alert towns, villages, and cities that the department has actually reviewed the proposed annexation, all submitted annexations are reviewed, and typically receive a short reply stating that "the proposed annexation submitted to our office on ...(date) has been favorably reviewed and found not to be against the public interest." Secondly, the standards to be applied by the department under annexation reviews performed according to s. 66.021 (11), Stats., are different than the standards to be applied by the department for municipal incorporation under s. 66.016, Stats.

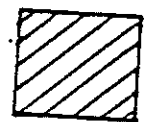
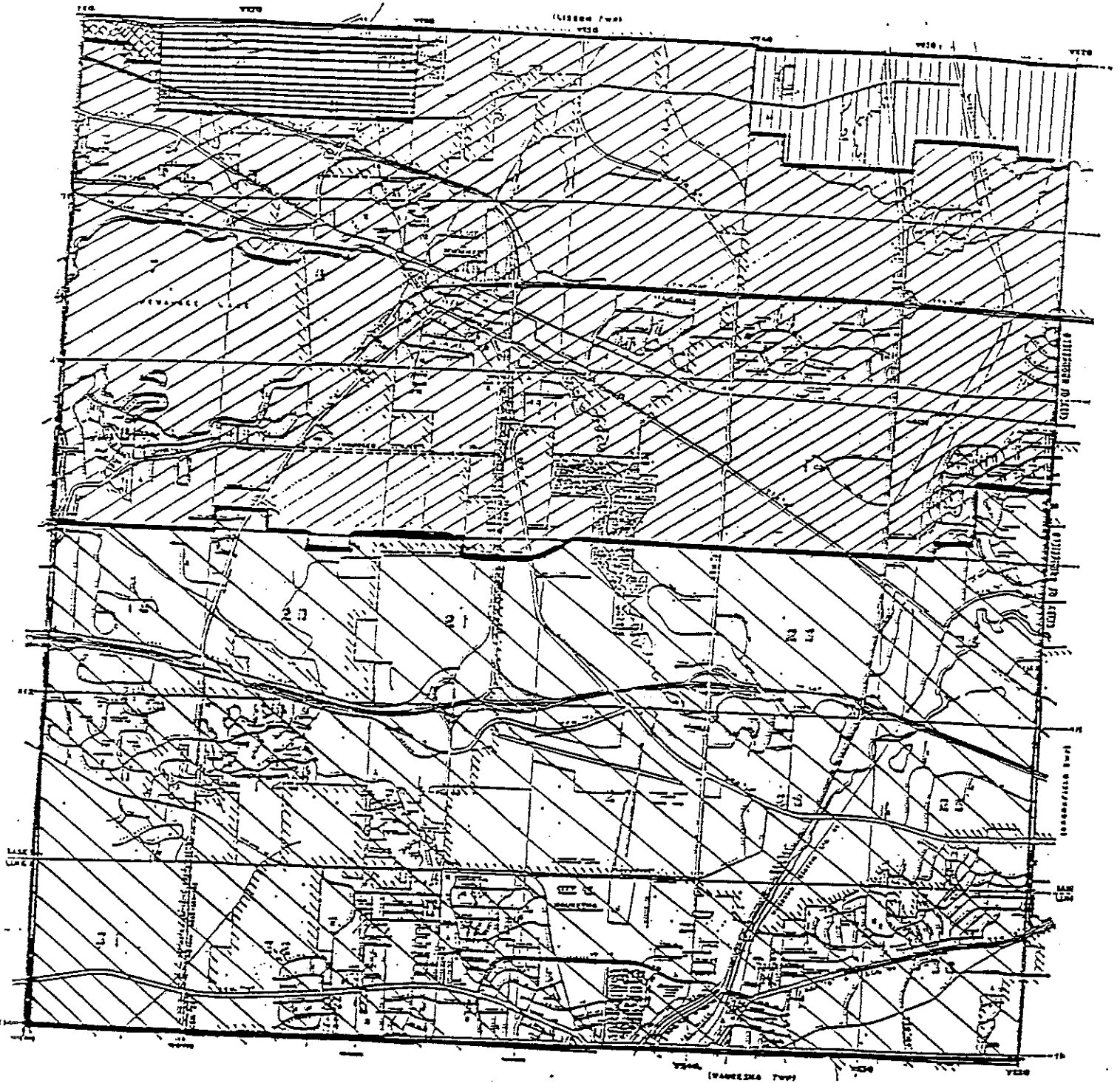
Boundaries of School Districts

The Town of Pewaukee contains land within five separate school districts: Pewaukee, Waukesha, Hamilton, Arrowhead High and Lisbon Joint School Districts (see Map 4). However, about 98 percent of the equalized value of the town is concentrated in the Pewaukee and Waukesha school districts. In terms of area, the town is almost evenly divided between the Pewaukee and Waukesha School Districts. The existing east-west boundary of these two school districts lies north of I-94. In section 13, the border between the two splits in half the Springdale subdivision in the SE 1/4 of section 13.

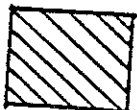
The Arrowhead and Lisbon/Richmond Joint School District overlap very small segments of town land on the northwest border, while the Hamilton School District takes up a small portion on the northeast border. None of these three school districts serve many students residing in the Town of Pewaukee.

Boundaries of municipal governments do not affect nor are they affected by school district boundaries. Should a boundary change be desired, the affected school districts would have to jointly agree to such a change. If agreement

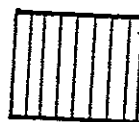
SCHOOL DISTRICT BOUNDARIES WITHIN PEWAUKEE TOWNSHIP



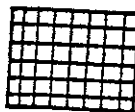
Pewaukee
School District



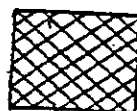
Waukesha
School District



Hamilton
School District



Richmond (Lisbon)
School District



Arrowhead
School District

could not be reached, appeal procedures specified in Chapter 117, Stats., would need to be followed.

Shopping and Social Customs

In the 1988 Consolidation Determination, the department identified "the Village of Pewaukee as the historic center for shopping and social activities, including recreation facilities..." (1988 Determination, p. 11) The department's recommendation to revise the 1988 petition for consolidation to reflect annexation and/or attachment of lands south of I-94 to the City of Waukesha concluded that homogeneity and compactness would be met by virtue of consolidation of the remaining town with the village. For purposes of this determination, the territory of the town alone is to be considered when evaluating whether or not the various standards for incorporation are met.

Concerning shopping and social customs, the town has responded to the department's questions by saying that it has "taken the posture that there is no real need for a major shopping center within the Town due to the fact that there are such facilities either existing or planned within the Village, within the City of Waukesha and within the City and Town of Brookfield, within a relatively short distance; and the duplication of such facilities would not be healthy for the general area." (Exhibit 30y) And, "... the town has taken into account metropolitan resources in refusing to permit strip center and commercial retail development, so as to encourage its residents to take advantage of the already overabundant shopping resources located primarily within the Town and City of Brookfield." (Petitioner's Brief at p. 28.)

A review by the department of 1990 aerial photographs (Exhibit 43k) in conjunction with the zoning map and ordinance (Exhibits 30s and 43j) suggests that even at the level of "neighborhood shopping²," residents must travel outside of the boundaries petitioned for incorporation to obtain weekly necessities, albeit at locations (such as Lake Country Square in the SW quadrant of STH "16" and CTH "KF;" Silver Nail Plaza, or retail shops in the Moreland Road area) annexed from the town either by the Village of Pewaukee or the City of Waukesha. The effect of an absence of neighborhood shopping facilities is an increased reliance on personal transportation, and longer distances to be traversed in order to meet daily consumption needs.

In contrast to the near absence of shopping opportunities (generically termed retail/commercial), the town has significant office and service commercial in addition to manufacturing and industrial activities which provide many varied sources of employment (discussed in the Environmental Assessment at pages 45-49).

²B-1 and B-2 zones within the context of the town Zoning Ordinance. These zones are described on pages 65-70 of Exhibit 30s, and include retail and customer service retail-type activities near residential areas in a shopping center setting.

Eight churches currently exist within the town, and two additional churches have purchased building sites (see Exhibit 43i, pages 3 and 4). For the most part, these churches appear to be physically free-standing, that is, they do not necessarily appear to be associated with a near-by residential community. Exhibit 43i notes that:

"...a large number of people in the town are members of and attend church in larger churches with metropolitan influence. The very character of a large metropolitan area spawns metropolitan events, places, uses and activities which in turn changes the social fabric of any community within the metropolitan area. An example is the fact that the largest non-denominational church in Wisconsin is located in the Town of Brookfield and draws membership from as far away as Port Washington, West Bend, Racine, Watertown, Oconomowoc, Milwaukee, Waukesha as well as the Town of Pewaukee."

The Pewaukee Directory (Exhibit 43a) contains a listing of government officials, services, and local assistance agencies, businesses, civic, recreation, social and service organizations, etc. The directory illustrates the common identity of the village and the town in that few distinctions are made over locations of various functional activities other than local government and parks/recreation. For example, annual events are intermixed, as are churches and businesses, etc. Civic, service and social organizations (Exhibit 43a, p. 29) which serve the combined area of the town and village appear to be located entirely within the village.

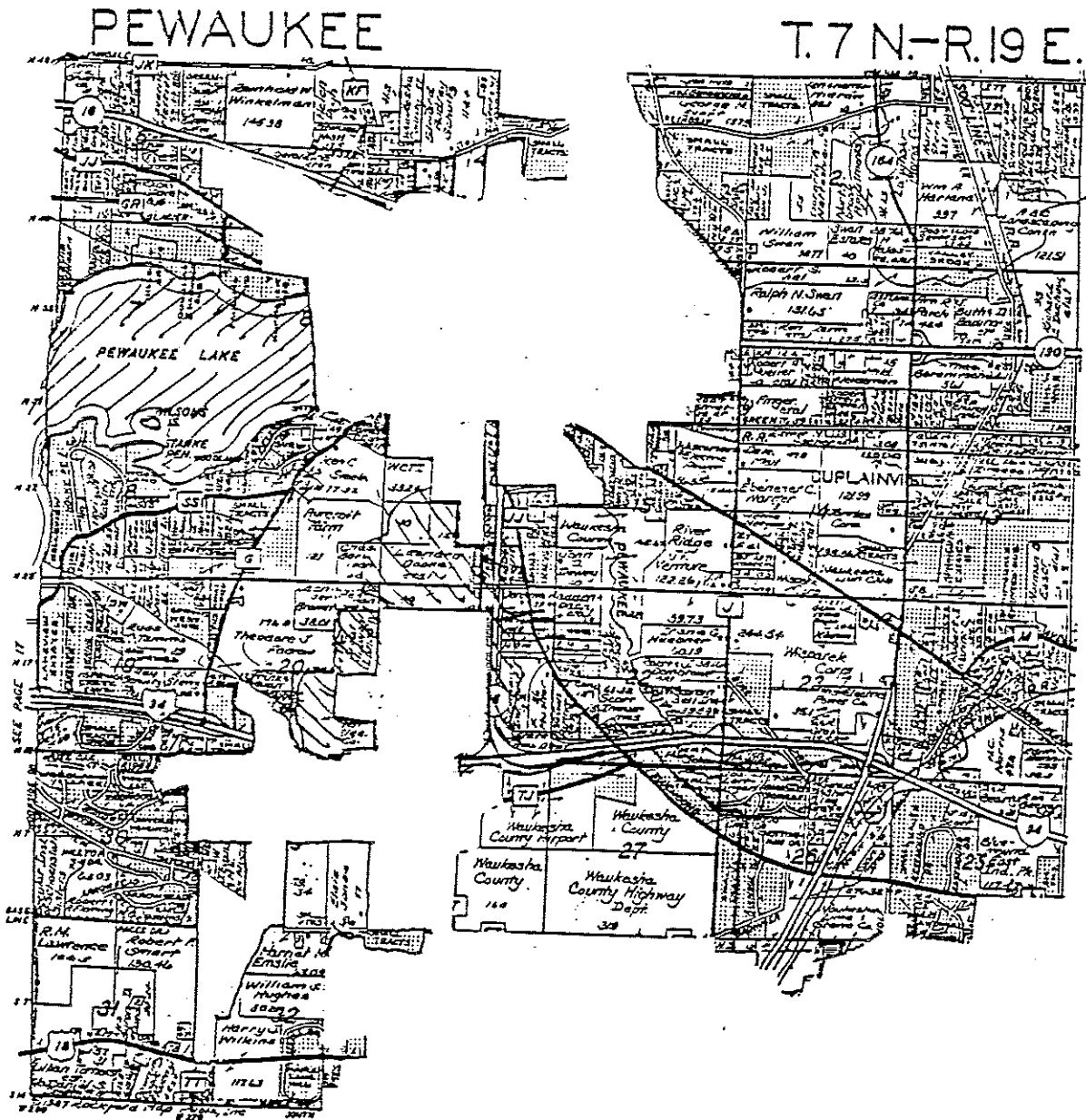
DETERMINATION

Natural Boundaries, Natural Drainage Basins, Soil Conditions

In 1988, the department determined for "natural boundaries," that "natural boundaries, natural drainage basins, soil and topographic conditions, although varied, are not so severe as to prevent a finding of homogeneity. The lake and streams with their associated wetlands and flood prone areas provide an opportunity for open space greenways that serve to enhance the community rather than creating barriers to development."

The town has gone to great effort to recognize through inventories, mapping, municipal planning and implementing ordinances (including the issuance of zoning and building permits), the existence of wetlands, flood-prone areas, areas of unstable soils, etc., so as to restrict these areas from any form of incompatible development. A consequence of this diligence is that wetlands and associated soils located in the west 1/2 of section 16 and the southeast 1/4 of section 17 together with the current boundaries of the city and village, serve to almost divide the town into two parts (see following Map 5). In addition, Lake Pewaukee physically separates those parts of sections 4-8 proposed for incorporation, from the remainder of the town. These natural characteristics effectively split the town into three parts, preventing a finding of compactness.

Location of Natural Boundaries



Transportation facilities

The multi-jurisdictional transportation network within the Town of Pewaukee supports motor vehicle trips which begin and/or end within the town, in addition to through trips which the state- and county-trunk highways are primarily designed to facilitate. These highways also form a predominate feature of the Village of Pewaukee.

While it is true that these highways facilitate reliance upon other municipalities for meeting social and consumer needs, these highways also facilitate the use of Town of Pewaukee residential and employment centers by metropolitan residents. The form of this highway network, a north/south, east/west grid based in part on the public land survey section lines, and not necessarily as spokes radiating from a central point (with the exception of the relationship of county and state trunk highways to the Village of Pewaukee), has also largely influenced and facilitated the rapid urbanization now occurring over much of the township. In this respect, the transportation system facilitates a finding of homogeneity rather than detracting from it.

Previous political boundaries

The department recognizes the stability of boundaries shared with all of the neighboring jurisdictions with the exception of the City of Waukesha. Also the department recognizes the transfer of the remaining portion of section 36 from the Town of Pewaukee to the Town of Brookfield, thereby eliminating one of the causes of a finding of lack of compactness in the 1988 Consolidation Determination.

Although laudable and an example of how intermunicipal agreements can serve to resolve controversy, physical compactness per se is not served by the recent town-village agreement, sections 4-8 proposed for incorporation are now physically separated (by land) by the village from the principal part of the town. The orientation of those sections lying northwest of the Village of Pewaukee relates more to the village than to the remainder of the town, because of the proximity of the new shopping center (Lake Country Square) in the village at the intersection of CTH "CF" and STH "16," along with other shops and services that existing and future residents of this area will be using, including the nearby village library and public schools. Residents of this area will need to traverse the Village of Pewaukee to reach the principal area of the town. Because of the relative location of this area compared with the rest of the town, with the passage of time, both police and non-utility service problems may well be better addressed by the village (such as the provision of police and fire - although the latter currently is a joint town/village volunteer department).

With respect to the failed September, 1990, agreement with the city, the town says, based on the "Memorandum of Law in Support of..." pp. 7-8, that it has "fulfilled" the legislative requirements for incorporation, the failed referendum notwithstanding. However, the failed referendum results in the continued isolation of sections 29, 31, 32 and 33. The isolation of these sections does not lead to a finding of compactness, separated as they are from

the remainder of the town by peninsulas of land in the jurisdiction of the City of Waukesha.

Boundaries of school districts

The department previously stated in the 1988 Consolidation Determination, at p. 14, "boundaries of school districts are unaffected and therefore neutral with respect to the consolidation of the village and town." Although schools are an important determinant in molding community allegiance through scholastic, social, and recreational activities, the determination of their boundaries is entirely separate from the process of municipal governance. In order for school district boundaries to change to reflect altered land use, social and demographic patterns, the affected districts acting on their own must reach consensus. For that reason, school district boundaries are still considered to be neutral with respect to municipal incorporation.

Shopping and social customs

With respect to shopping and social customs, the department finds that the town is externally oriented, admittedly by the design of the land use plan, as the town seeks to avoid competing with neighboring jurisdictions (see Exhibit 30y, p. 9.) by minimizing the presence of strip, neighborhood, and regional shopping centers, such as would appear in zoning districts b-1 through b-3 (see Exhibit 30s).

In the Allouez Determination, which is referenced by the petitioners, the department distinguished between acquiring goods to meet basic needs, and major consumer items, finding that the former could be acquired, but not the latter, a function of retail trade specialization to be expected in a metropolitan setting. In the Allouez Determination, page 17, the department noted that Allouez possessed "three full-service banks, two large supermarkets, medical clinics, a shopping center...." The department further stated on page 17, that Allouez was "...developing a service and retail (emphasis added) trade profile which goes beyond the convenience retail type of shopping prevalent at the time of the 1972-73 incorporation attempt."

Within the Town of Pewaukee, the principal location designated for neighborhood-, community-, office- and highway-oriented business (see Map 38, "Recommended Land Use Plan for the Joint Pewaukee Study Area," p. 157, in SEWRPC, A Land Use Plan for the Town and Village of Pewaukee:2000, Community Assistance Planning Report No.76), is presently zoned B-4 (professional office district), or B-6 (mixed-use business district, which permits neighborhood and community -- B-1 and B-2 -- businesses), but is not being developed with businesses which could be said to meet the daily needs of town residents.

Social customs, while evidenced by the existence of churches, and an extensive town recreation, parks, and lake safety program, lacks such a focus as had been previously obtained through association with the Village of Pewaukee, where all of the civic clubs and service organizations appear to be located,

and which is the site of one of the libraries frequented by town residents, and the school system attended by those children mostly living north of I-94.

SECTION 1 (b). TERRITORY BEYOND THE CORE SQUARE MILE

STANDARD TO BE APPLIED

"The territory beyond ...the most densely populated square mile specified in s. 66.015 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in s. 66.021 (1) (a) for real estate tax purposes, more than 25% of which is attributable to existing or potential mercantile, manufacturing or public utility uses. The territory beyond the most densely populated square mile as specified in s. 66.015 (3) or (4) shall have the potential for residential or other land use development on a substantial scale within the next three years. The department may waive these requirements to the extent that water, terrain or geography prevents such development."

ANALYSIS

The standard (1)(b) "Territory beyond the core," is comprised of two parts. The first standard to be applied permits whichever criteria is met, 30 housing units average per quarter section, or 25 percent or greater assessed value which is attributable to "existing or potential mercantile, manufacturing, or public utility uses," to satisfy the standard.

Existing equalized full value for 1989 for the Town of Pewaukee is \$456,755,500. Respective equalized 1989 full values for existing industrial and commercial real estate are \$28,848,505, and \$98,337,000, and together equal \$127,185,500, or 27.85 percent of the total equalized full value of the town.

The petitioners in this incorporation proceeding have elected to name section 13 as the "most densely populated square mile." Separating the most densely populated section, section 13, from the total full equalized value will, because of the relatively high housing values present in section 13, act to increase the proportion of commercial and manufacturing values over the remainder of the town, to a rate greater than the overall 27.85% average.

The second part of 1 (b) states that "territory beyond the most densely populated square mile as specified in s. 66.015 (3) or (4) shall have the potential for residential or other urban land use development on a substantial scale within the next three years. The department may waive these requirements to the extent that water, terrain or geography prevents such development."

"Potential development" means "development which has not yet taken place," following the definition found in Pleasant Prairie v. Local Affairs and Development, 108 Wis. 2d, 465, 475. And, "substantial," again following Pleasant Prairie, at 476, suggests that while the court found the term ambiguous, accepted the department's interpretation that substantial development meant 25 percent development under those circumstances, but also that a definition of "substantial" would vary according to the size of the area outside of the core. "...such a variable definition would allow meaningful examination of each incorporation petition which would take into account the peculiar differences of each area." (Pleasant Prairie at 476.)

With the assistance of the SEWRPC, the Town of Pewaukee has delineated undevelopable lands through an adopted land use plan and zoning ordinance. These lands appear on Map 10 (of the EA), and in more detail on Exhibit 30v (1985 Land Use and 1990 Update Overlay) and Exhibit 43j and k (1989 Town of Pewaukee Zoning Maps - 9 sheets, and 1990 Town of Pewaukee Aerial Photos -- the new zoning map base). Authority for the reservation of these lands is based in part on NR 121.05 (g)2.c., Wis. Adm. Code, used in delineating sewer service areas appropriate for urban development. Areas to be considered for exclusion "include but are not limited to wetlands, shorelands, floodways and floodplains, steep slopes, highly erodible soils and other limiting soil types, groundwater recharge areas." In addition, the Town of Pewaukee has adopted exclusive agricultural zoning for lands identified in the Waukesha County Farmland Preservation Plan. Preservation of prime farm land is in accordance with federal, state, regional and county policy embodied in the Farmland Preservation Act (Ch. 91, Stats.), and the Waukesha County Farmland Preservation Plan. As was noted in the Environmental Assessment on the Incorporation of the Town of Pewaukee, p. 44, prime agricultural lands, as a policy matter, appear to be a last resort resource for development. In addition, it is not unusual to find that incorporated Wisconsin municipalities have made exclusive agricultural zoning a part of their regulatory ordinances.

In its 1988 Consolidation Determination, the department produced two maps (Maps 8 and 9, pages 16 and 17), which provided approximate delineations of undevelopable lands and areas within the Town of Peawaukee determined to lack significant potential for development within three years. Information from Exhibit 43j (the 1989 Zoning Map), portraying delineated LC - Lowland Conservancy, UC - Upland Conservancy, F-1 - Floodland, and SO - Shoreland Overlay, indicates that additional undevelopable lands should be indicated in sections 2, 3, 6, 13, 14, 21, 22, 23, 24, 25, 30 and 31. In 1988, the department determined that all other areas of the town except for portions of sections 1-6, and 31-32, were considered to have met the "substantial development" test.

In 1989-90, the Village of Pewaukee annexed over 1/2 of section 3 and an additional 1/4 of section 4 (the Bennet/Patch annexations), as well as other lands, intending them for residential and commercial uses. Upon receiving a petition dated October 24, 1990, to the SEWRPC, requesting that these 565 acres be added to the sanitary sewer service area, the SEWRPC staff recommended and the commission concurred, to recommend to DNR that the approval be granted (see Exhibit 47d). The town's remaining territory in section 3 is currently predominately zoned Upland or Lowland Conservation, A-

1 (exclusive agriculture) or A-2, with scattered residential development along Swan Road that is zoned Rs-1, -2, -3 (single family residential district of 5, 2 or 1 acre minimum lot area respectively).

Because of Lowland Conservancy zoning in the NE 1/4, and additional residential development in section 6 (Taylors Woods, see Exhibit 30v), this section is considered to no longer be at issue (see Exhibit 43j and k).

In section 5, the Village of Pewaukee has recently completed a neighborhood shopping center in the southeast quadrant of the STH 16 - CTH KF interchange, illustrating development potential for neighboring acreage in the Town of Pewaukee. Other undeveloped lands remaining in the town are primarily A-1, exclusive agriculture, or, in the case of smaller parcels, zoned A-2 agriculture, upland or lowland conservancy, park and recreation, etc. Parts of section 5, 5-1 and 5-3, may very likely be major regional groundwater recharge zones, and probably should not be intensively developed at all.³

Turning to sections 1 and 2, additional residential dwellings appear in the NW 1/4 of section 2 which were not present in the earlier aerial photo (see Exhibit 43j and k). Otherwise, the principal portion of lands remaining in section 2 are zoned A-1, exclusive agriculture, or conservancy or floodland. A platted residential subdivision has since developed south of Lindsay Road in the NE 1/4 of section 2. Lands in section 1 show little change in Exhibit 43j and k, with the developable lands shown earlier in 1988 continuing to be predominately zoned A-1 and A-2. A subdivision plat (unsewered) on A-1 and A-2 zoned land in the NE 1/4 of section 2 adjacent to STH "164" is further illustrative of development potential in this area.

In the southeast corner of the township, both sections 31 and 32 (excluding the recent Emslie-Roberts annexation to the City of Waukesha) are predominately zoned A-1, exclusive agriculture or lowland conservancy. Of the developable lands earlier portrayed by the department, section 31-2 should be excluded because it is zoned lowland conservancy, along with parts of 31-3 and 31-4 which are presently designated upland conservancy. The remaining A-1 lands, including those in section 29 and 30, have development potential only when provided with sanitary sewer, a service which for this area will require an extension of the City of Waukesha's Urban Service Area Boundary.

DETERMINATION

For the part of s. 66.016 (1) (b), "The territory beyond ...the most densely populated square mile specified in s. 66.015 (2) shall have an average of more than 30 housing units per quarter section or an assessed value, as defined in

³As an indication that groundwater depletion and contamination is becoming an important issue relating to the types and densities of land development to be allowed, the WDNR recently ordered that a study be performed on the Black Earth Creek watershed, and that the results be disclosed prior to permitting an extensive golf course/residential home community to be developed in territory currently in the Town of Middleton, Dane County.

s. 66.021 (1) (a) for real estate tax purposes, more than 25% of which is attributable to existing or potential mercantile, manufacturing or public utility uses," the department believes this criterion to be satisfied through existing commercial and industrial property values, without having to rely on additional "potential" commercial or industrial values stemming from "approved," but not yet built commercial and manufacturing developments.

Taken as a whole, particularly considering Exhibits 30v, and 43j and k, the principal part of the town also meets the "substantial" development within 3 years test. This conclusion is based in part on the land use changes which have occurred since the department considered the consolidation petition in the summer of 1988. Lands within the peripheral sections 1 and 2, and the north halves of sections 5 and 6, as previously discussed, actually have less land available to be developed than was portrayed by the department in 1988. These sections continue to remain outside the planned sewer service area boundary shown on Map 12 of SEWRPC Report No. 113. Nonetheless, because of the additional development planned in Section 6 (Taylors Woods), and the unsewered subdivisions either platted (and with homes continuing to be constructed) or planned for the developable lands in the eastern 1/2 of section 2 west of STH 164, these lands (which tend to lend themselves to on-site sewage treatment systems) continue to show development potential.

However, sections 29 through 32 currently contain undevelopable lands (secondary environmental corridors), and lands zoned exclusive agriculture which are adjacent to the City of Waukesha boundary. Although rapid development is occurring in this area, it is only happening following successful annexation to the City of Waukesha. This is in large measure due to need for public sanitary sewer and water, which only the City of Waukesha can provide, and will not provide until the year 1995 for the SW 1/4 of section 30 and the west 1/2 of section 31 (unless the city successfully petitions for an Urban Service Area Boundary amendment enabling it to serve the areas sooner). The standard in section 1 (b) which allows the department to waive the "potential for residential or other land use development within the next three years... to the extent that water, terrain or geography prevents such development," does not include excluding land for policy reasons such as the presence of A-1 Exclusive Agricultural zoning. This area of the town is, by itself, too large to ignore, and since there is apparently no unsewered development occurring which isn't sewered, the department finds that the town cannot meet this standard.

SECTION 2 (a) TAX REVENUE

STANDARD TO BE APPLIED BY THE DEPARTMENT

"In addition to complying with each of the applicable standards set forth in sub (1) and s. 66.015, any proposed incorporation in order to be approved for referendum must be in the public interest as determined by the department upon consideration of the following: (a) Tax Revenue. The present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate

which compares favorably with the tax rate in a similar area for the same level of services."

ANALYSIS

Trends in local property tax rates in the area

In general, local property tax rates for Waukesha County municipalities show no consistent trend over time from 1986-1989, rising some years and falling during others. However, using 1986 as a base year, tax rates in 1989 had fallen for the cities of Brookfield, Delafield, New Berlin, Muskego and Oconomowoc, while rising in the City of Waukesha. Rates fell in the villages of Sussex and Hartland, while rising in the village of Pewaukee and Menomonee Falls. Rates declined in the towns of Merton and Genesee, while rising slightly in the towns of Pewaukee and Delafield. Rates had a greater absolute and percentage rise in the towns of Lisbon and Brookfield. (See Tables 1-4.)

The local tax rate in 1989 in the Town of Pewaukee of \$2.44 was higher than any adjacent town except for Brookfield, which was \$3.79. By contrast, rates of all adjacent cities and villages were higher than all adjacent town rates, ranging from a high of \$9.13 in the City of Waukesha to a low of \$4.58 in the Village of Sussex. (See Table 1.)

Throughout the state, all of the cities and villages in the size range from 8,000 to 12,300 persons had tax rates which exceeded all those of the towns in that size class. The city with the lowest tax rate in this size class was Whitewater, with a rate of \$4.827 compared to the town with the highest tax rate in this size class, Pleasant Prairie (which recently incorporated), with a rate of \$3.073. For the 5 towns within this size class, Pleasant Prairie, with 12,297 people, had a tax rate of \$3.073 compared to \$2.441 for the Town of Pewaukee (pop. 9,722), \$1.368 for the Town of Richfield (pop. 9,046), \$1.364 for the Town of Lisbon (pop. 8,704) and \$.801 for the Town of Somers (pop. 8,238). (See Table 4.)

The Town of Pewaukee was one of four of the 7 adjacent townships which had a local tax rate increase from 1987-88, and was one of only two which had a tax rate increase, rather than decrease, from 1988-89.

Government tasks now performed by the town

Acting under adopted village powers, the Town of Pewaukee provides the following services: police, fire, ambulance service, street maintenance, refuse collection by contract, water and sewer utilities (through sanitary districts established by the town board), and general government services including planning and zoning, assessment, building inspection, and recreation. Currently, many of these services are now offered only at a basic level, utilizing part-time staff. A memo from the town notes that:

Table 1

COMPARATIVE LOCAL PROPERTY TAX RATES: SELECTED WAUKESHA COUNTY MUNICIPALITIES

MUNICIPALITY	1986	1987	1988	1989
BROOKFIELD (C)	6.224	5.326	5.483	5.642
DELAFIELD (C)	7.190	7.307	6.768	5.255
NEW BERLIN (C)	5.129	5.033	4.887	4.706
WAUKESHA (C)	8.998	8.936	9.163	9.132
MUSKEGO (C)	6.042	5.857	5.720	5.489
OCHOWOC (C)	7.777	7.947	8.015	7.403
HARTLAND (V)	6.904	6.910	6.384	6.439
MENOMONEE FALLS (V)	6.968	6.937	7.073	7.426
PEWAUKEE (V)	7.010	7.158	7.320	7.722
SUSSEX (V)	5.268	5.237	4.975	4.585
BROOKFIELD (T)	2.642	3.663	4.033	3.789
DELAFIELD (T)	1.516	1.443	1.655	1.648
GENESEE (T)	1.020	0.964	0.940	0.370
LISBON (T)	0.946	1.173	1.371	1.364
MERTON (T)	1.984	1.955	1.327	1.570
PEWAUKEE (T)	2.409	2.323	2.390	2.441
WAUKESHA (T)	1.193	1.167	1.057	1.224

SOURCE: WISCONSIN DEPARTMENT OF REVENUE

NOTE: RATES ARE PER \$1,000 FULL VALUE. THEY INCLUDE
UTILITY DISTRICT LEVIES AND STATE/COUNTY SPECIAL CHARGES.

Table 2

TAX INCREMENTS FOR WAUKESHA COUNTY LEVIED 1989, PAYABLE 1990

MUNICIPALITY	TOTAL TAX INCREMENT
DOUSMAN (V)	19,605
ELM GROVE (V)	183,938
HARTLAND (V)	537,408
MENOMONEE FALLS (V)	108,225
MERTON (V)	39,406
WASHOTA (V)	42,610
NORTH PRAIRIE (V)	90,981
PEWAUKEE (V)	11,475
SUSSEX (V)	1,401,074
DELAFIELD (C)	611,694
MUSKEGO (C)	1,759,434
OCHOWOC (C)	259,915
WAUKESHA (C)	1,162,553

SOURCE: WDOT TIF WORKSHEETS, 1989 PAYABLE 1990.

Table 3

COMPARATIVE LOCAL PROP. TAX RATE CHANGES: SELECTED WAUKESHA CO. MUNICIPALITIES

MUNICIPALITY	1986-87	1987-88	1988-89	1986-89
BROOKFIELD (C)	(0.398)	(0.343)	0.159	(0.582)
DELAFIELD (C)	0.117	(0.539)	(1.513)	(1.935)
NEW BERLIN (C)	(0.096)	(0.146)	(0.181)	(0.423)
WAUKESHA (C)	(0.062)	0.227	(0.031)	0.134
MUSKEGO (C)	(0.185)	(0.137)	(0.231)	(0.553)
OCNOMOC (C)	0.170	0.068	(0.612)	(0.374)
HARTLAND (V)	0.006	(0.026)	(0.445)	(0.465)
MENOMONEE FALLS (V)	(0.031)	0.136	0.353	0.458
PEWAUKEE (V)	0.148	0.162	0.402	0.712
SUSSEX (V)	(0.031)	(0.262)	(0.390)	(0.683)
BROOKFIELD (T)	1.021	0.370	(0.244)	1.147
DELAFIELD (T)	(0.073)	0.212	(0.007)	0.132
GENESEE (T)	(0.056)	(0.024)	(0.070)	(0.150)
LISBON (T)	0.227	0.198	(0.007)	0.418
MERTON (T)	(0.029)	(0.128)	(0.157)	(0.314)
PEWAUKEE (T)	(0.086)	0.067	0.051	0.032
WAUKESHA (T)	(0.026)	(0.110)	0.167	0.031

Table 4

COMPARATIVE 1989 LOCAL PROPERTY TAX RATES: TOWN OF PEWAUKEE AND OTHER WISCONSIN MUNICIPALITIES OF SIMILAR POPULATION SIZE.

MUNICIPALITY	1989 POPULATION	1989 TAX RATE	COUNTY
PEWAUKEE (T)	9,722	2.441	WAUKESHA
LISBON (T)	8,704	1.364	WAUKESHA
RICHFIELD (T)	9,046	1.368	WASHINGTON
PLEASANT PRAIRIE (T)	12,297	3.073	KENOSHA
SCHERS (T)	8,238	0.801	KENOSHA
LITTLE CHUTE (V)	9,256	6.707	OUTAGAMIE
GRAFTON (V)	9,133	7.858	OZAUKEE
OCNOMOC (C)	10,830	7.403	WAUKESHA
FORT ATKINSON (C)	10,161	8.174	JEFFERSON
WHITEWATER (C)	9,390	4.827	WALWORTH
MONROE (C)	10,478	8.275	GREEN
BARABOO (C)	8,656	12.264	SAUK
BURLINGTON (C)	8,780	8.579	RACINE
STURGEON BAY (C)	9,553	8.916	DOOR
PORT WASHINGTON (C)	9,171	9.649	OZAUKEE
RHINELANDER (C)	8,024	11.504	ONEIDA
ANTIGO (C)	8,726	9.304	LANGLADE
PLATTEVILLE (C)	9,692	6.725	GRANT

SOURCE: WISC. DEPT. OF REVENUE

"the Town has specifically taken the posture of holding down the local tax levy rate by holding down the number of full time employees on the payroll. Consequently, a number of the departments are staffed by part-time employees as needed." (Exhibit 30y.)

The assessor, the treasurer, the building inspection department, the parks department, the fire department, and the town administrator are all part-time positions. The police department has 2 full-time personnel and the highway maintenance department has 5 full-time personnel.

Government tasks to be added by the town

Upon incorporation, the proposed City of Pewaukee would have to provide a board of police and fire commissioners (s. 62.13, Stats.) and a weights and measures inspector (s. 98.04, Stats.). A health commissioner or board of health (s. 141.05, Stats.), board of election officials (s. 7.3, Stats.), and board of review (s. 70.46, Stats.) may also need to be provided, although these functions can be consolidated with other offices (see s. 66.09(3)(c) and 66.01, Stats.). An engineer (which the town has), comptroller, street commissioner, and board of public works can be dispensed with by a 2/3rds majority vote of the council, as long as other officers perform the duties (s. 62.09 (1)(b), Stats.). The proposed city may also take over the operation of the Lake Pewaukee Sanitary District, since the majority of patrons at this time appear to reside in Pewaukee rather than Delafield. In addition, county sheriff services may be reduced or, as is common with some counties, may be obtained by agreement.

In Exhibit 30b, the town begins to detail expected cost increments for services and for some infrastructure required by the town for the period from 1988-2000 and from 2000-2013. However, infrastructure items cited do not include debt service costs. Secondly, costs of increased staff allocated over the period do not include cost-of-living increases in wages and salaries. It is not clear that fringe benefits are included as part of personnel costs. The memo's projected municipal-purpose tax rate of \$5.10 projected for the year 2013 is arrived at assuming a 3 percent inflation rate for property values. However no similar inflation rate is applied to costs. It also does not appear that the costs for maintaining additional miles of local roads are included, perhaps because it is assumed that developers will pay for these. However, neither are the pro-rated costs for extending or upgrading county trunk highways included (should the town be asked to pay a pro-rated share of the capital costs). It does not appear that services such as increased storm sewer facilities, ambulance services for the elderly, new water infrastructure, low-income housing aids, and public metro service are included either. It could be argued that some of these service are discretionary, not automatic additions, and serve to reflect the changing preferences of an expanding and aging population over time. It does appear however, that the \$5.10 tax rate projected for the year 2013 may be an underestimate of fiscal impacts resulting from growth in the town, regardless of the factor of incorporation.

Comparative empirical data on 1989 tax rates of towns versus incorporated municipalities of the same size range indicate that there is a major difference in rates between the towns as a group and incorporated municipalities as a group. (Refer to the above section on Trends in Property Tax Rates.) The lowest tax rate of any city in the 8,000 to 12,000 population size class in 1989 was \$4.827 for the City of Whitewater. The highest tax rate for any town in that population range was \$3.073 for the Town of Pleasant Prairie (now incorporated). It appears that incorporation in itself will bring with it the likelihood of an increased budget.

The Town of Pewaukee would have no trouble finding the tax base to support a shift to an urban level of services appropriate to an incorporated community in the metropolitan area. (See the Environmental Assessment, pages 85-90.) However, in order to accomplish this, it will not be able to maintain the low tax rates it projects for the next 20 years. The town has possibly underestimated the tax rate required to meet prospective service needs engendered by rapid urbanization, irrespective of the incorporation question, but it has the requisite tax base to meet additional needs at tax rates comparable to those of its neighbors.

DETERMINATION

It is the department's finding that should incorporation occur, that local purpose expenditures will likely increase, but due to the large tax base, that the resulting tax rate will continue to compare favorably with tax rates of similarly situated local governments. Therefore, the department finds that this standard is met.

SECTION 2 (b) LEVEL OF SERVICES

STANDARD TO BE APPLIED

"The level of governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014 (b)."

ANALYSIS

Library service

Both the Village of Pewaukee and the City of Waukesha operate public libraries that are members of the Waukesha County Federated Library System. Summary statistics for the Village and City libraries, taken from the "Waukesha County Library System, Member Libraries Analysis of Ability to Meet State Standards for Library Service" (1986), are listed in Table 12. County residents such as

those of the Town of Pewaukee who live in a municipality without a library, may use any library within the system. Residents from such municipalities must pay a countywide tax for library service. In 1990, this countywide tax was \$.3144 per one thousand dollars of equalized value. (Exhibit 17a, p.8.) As long as Waukesha County municipalities with libraries levy a local tax equivalent to the county levy, they may exempt their residents from contributing to the county library tax levy.

The Town of Pewaukee does not currently maintain a library, and thereby contributes \$143,604, or 18.6 percent to the 1990 County Budget, as its share of federated county library system expenditures. (See 1990 County Budget-In-Brief, Exhibit 17a, p.8.)

A recent survey by the Waukesha County Library System staff, "User Survey at Member System Libraries, 1988" found the following results for library use for those Town of Pewaukee residents who used a public library during the survey period: 41 percent used the Village of Pewaukee Public Library; 41 percent used the City of Waukesha Public Library; 15 percent used the City of Brookfield Public Library.

Statistics from the Waukesha Public Library show that residents of the Town of Pewaukee checked out 20,232 items for the period of April through September 1990; this is 10 percent of all items circulated to non-residents during the period. Extrapolating this borrowing rate to a one-year time frame, Town residents would check out approximately 40,000 items per year. At a unit cost of \$1.47 per circulation, this means the Town would use about \$60,000 in City library services in the last year. (See Exhibit 33ba.)

Should the Town of Pewaukee incorporate as a city, it would still lack a library of its own and indicates no plans to build its own. Therefore, town residents will have their needs met in the same manner as before incorporation and, would continue to rely on the county federated system.

Police Protection and Facilities

The town police department has 2 full-time employees, the Police Chief and a Police Sergeant, with a third full-time employee to be added in 1991. There are 28 to 30 part-time officers, with an average of 6 years of experience, employed to insure 24-hour service, seven days a week. There is also a summer and winter lake patrol for the entire lake area including, by contract, those portions in the jurisdiction of the Village of Pewaukee and the Town of Delafield. Additional as well as replacement squad cars, and an additional lake patrol boat have been budgeted for by the town. (See Exhibit 30i, p. 23.)

Statistics from the county sheriff's department indicate that the town relies heavily on the county to answer police calls within the town. For example, of traffic accidents in 1989 in the township, 563 out of 982 (57 percent), were calls answered by the county sheriff's department. Only 294 calls, or 30 percent, were answered by town police. (See Exhibit 10.)

The City of Waukesha employs 126 people within the Police Department, 91 sworn officers and 35 civilians covering approximately 18 square miles of city territory. The city proposes to add 3 full-time officers, acquire an additional squad car, and add other personnel if necessary. The city would continue to rely upon the County Sheriff, particularly to police county-owned property, which forms a significant proportion of the proposed annexation. However, traffic patrol would become the responsibility of the city. Upon annexation, town territory south of I-"94" would be added to the city's 911 emergency dispatch service (see Exhibit 33, "AJ"). The exhibit materials submitted by the city indicate no plan to provide service to that part of the town lying north of I-"94."

Comparative statistics provided by the city suggest that the current town police budget is approximately 8% of the city's, that reported accidents and citations are about 2% of the city's, that offense reports are about 9% of the city's (statistics are from Exhibit 33aj), and that the city police department worked over 13,766 hours of overtime during 1989- (equal to at least 7 person-years at 40 hours a week, see Exhibit 33a). It appears that the present city/town reliance upon the Waukesha County Sheriff in the area surrounding county property would diminish following any annexation by the city of town property, though the county would continue to provide for law enforcement to its own facilities (the fairgrounds, the airport, etc.), and that the hiring of the extra officers would also reduce existing overtime hours.

Fire and Emergency Medical Protection Services and Facilities

The town employs 60 paid-on-call fire and rescue personnel, operating in the joint village-town area. The town has 2 fully equipped fire stations. A third station is operated jointly with the Village of Pewaukee and is located in the village. A site for a fourth station has been acquired on CTH "J", one mile north of I-94, which is proposed to become the central fire station. It will be built to accommodate full-time, 24-hour staff. The town also has hazardous materials (Haz-Mat) equipment for use with fires involving industrial chemicals. The town's current fire insurance rating is a 5/9. The rating depends upon whether the area of the town has fire hydrants supplied by public water mains. A comparison of fire insurance ratings for adjacent Waukesha municipalities can be found in Table 5. The town does not anticipate "that fire problems will increase with increased development," although fire functions are expected to become "more and more full time." (See Exhibit 30y, p. 10.) The town has budgeted for two pumper fire trucks in 1991 and 1992, as well as a 105 foot ladder squirt truck for 1993. (See Exhibit 43d, p. 25.)

The city employs 90 full-time fire personnel as paid, professional staff, and a full-time fire fighter training officer. All full-time fire personnel are licensed Emergency Medical Technicians. The city also has on staff 64 trained EMT-D's who can defibrillate a heart in ventricular fibrillation in an emergency, and 12 trained paramedics who can maintain direct radio contact with hospital emergency medical department when out on call. The City has a citywide 9-1-1 emergency phone system staffed by both Police and Fire dispatchers. The city owns 6 fire engines, 2 ladder trucks, 4 ambulances, 1 paramedic unit, 1 special service vehicle, 1 haz mat truck, and 5 staff cars.

Table 5

FIRE INSURANCE RATINGS FOR SELECTED WAUKESHA COUNTY
MUNICIPALITIES

Towns

Brookfield	4/9
Delafield	7
Pewaukee	5/9
Waukesha	8/9

Villages

Pewaukee	6
Menomonee Falls	5/9

Cities

New Berlin	3/9
Waukesha	3

Source: Insurance Services Organization (current as of December 1, 1990)

The current fire insurance rating of the city is a uniform 3, independent of location in the city.

There are areas in sections 20, 21 and 29 within the city's corporate boundaries which do not meet the recommended response time radius of 1.5 miles established for fire engine service by the Insurance Services Office of Wisconsin (Exhibit 33aq). In addition, significant areas of the town south of I-94, remain outside the 1.5 mile response time radius at present, as do all of sections 26, 30 and 31, and portions of sections 25 and 32 (Exhibit 33ar). One of the Town's fire stations located on Meadowbrook Rd. could be considered for future acquisition by the City if that area is annexed. However it is doubtful that the site would be ideal in terms of overall future service expansion needs from the jurisdictional perspective of the city. (Exhibit 33aq.)

The city has requested capital improvements for fire service in 1991 which include two new fire stations. However, only capital improvement costs for one station, for which the location is unspecified, is documented. The fiscal year for that capital improvement is also unspecified in Exhibit 33aq (within this document see city's Exhibit 5). Other improvements budgeted include an addition to Fire Station No.1, a new replacement ambulance, a grass fire unit, a new fire chief truck and a new pick up truck. (See Exhibit 33aq, containing city's Exhibits 4-11.) One of the two new sites proposed for a fire station is on the west side at Merrill Hills Rd. and Kisdon Hill Dr., at the west edge of the NW 1/4 of section 5 of the Waukesha township, close to the unsewered areas within sections 30-32 of the Town of Pewaukee. This station, when built and staffed, would likely be able to serve areas in sections 30-32 within the ideal response time radius of 1.5 miles.

However, the north 1/2 of section 30 and part of section 19 lying south of I "94" would lie beyond the 1.5 mile service range of the proposed city station at Merrill Hills Road and Kisdon Hill Dr. (as well as being beyond the range of the existing city station No. 4 on Northview at Grandview Blvd). The existing town station at Meadowbrook and Northview appears to be better situated to serve the present areas of the town lying within sections 30, 31 and 32. The city relies on its Exhibits 1 and 3, appended to Exhibit 33aq, to suggest that the existing town station cannot adequately serve sections 31 and 32. However the 1.5 mile "lobe" drawn in 1983 does not reflect either current street patterns, nor available access once the areas have a fully developed hierarchy of arterial, collector, and local streets. The capital improvements enumerated by the city do not suggest that the city is prepared to serve the area of the town lying north of I-"94."

Exhibit 33aq presents a list of city fire fighting equipment. Although support equipment is mentioned, no tankers are listed (one is slated for purchase, along with a grass fire unit on city's exhibits 7 and 10 of Exhibit 33aq). The narrative in city Exhibit 33aq implies that the town's ISO rating of 9 in the areas where a public water supply is unavailable would change upon annexation by the city. This conclusion would be correct only if the city can demonstrate a continuing ability to transport and store water sufficient to maintain a constant fire flow over a sustained period of time. The city's existing ISO rating of 3 is based upon the availability of fire hydrants fed

by a public water supply system meeting minimum volume and supply characteristics. The city is correct in asserting that fire insurance rates for commercial areas in the town lying south of I-"94" would likely benefit from annexation, as the rates for commercial/industrial areas continue to decrease as municipalities move to lower ISO ratings. In contrast, the greatest change in residential insurance premiums is realized by the time a fire department has moved from an ISO rating of 9 to a 6 or 7.

The Village (mentioned because the town and the village have a joint fire department) is served by 50 paid-on-call fire fighters and 6 major pieces of equipment. Rescue service is also available through 35 emergency medical technicians and an ambulance. The Village reports that it is likely that additional paid-on-call and some full-time staff positions will be created, based on anticipated development. The Village contracts with Lake Area Communications System for dispatch service. Lake Area Communications is in the process of updating their system to provide 9-1-1 service to contract customers.

In 1989, the City fire department responded to 3,295 fire alarms, including 690 fire responses and 645 fire runs, and 1,235 paramedic responses. In 1989, the Village fire department answered 88 calls and their EMTs answered 194 calls. Within the Town of Pewaukee, there were 115 fire alarms and 363 rescue calls responded to in 1989.

Although the city has a higher ISO rating, it appears that the level of fire services provided by the town in combination with the village are sufficient to meet the protection desired or needed by the residents. Further, the city did not indicate that it was prepared to serve the entire town.

Parks and Recreation

In A Park and Open Space Plan for the Town and Village of Pewaukee, Waukesha County, Wi. (1980), SEWRPC inventoried existing park and recreation sites. In addition, it projected future needs based on average per capita recreation standards and expected population growth. SEWRPC estimated that the town was meeting its current recreational needs, but was projected to have a shortage of available parkland by the year 2000. The town has subsequently added additional type IV parks - those less than 25 acres in size - but has not apparently added any Type III parks (ranging in size from 25 to 99 acres).

In 1975, town parks exceeded established goals for intensive recreation facility capacity, (including baseball diamonds, basketball courts, playing fields, playgrounds, and tennis courts) based on the then-existing population. As of 1980, the town is estimated to require additional facilities in every category by the year 2000. In addition, the upper third of the township had almost no park and recreation space in 1980. SEWRPC's recommended acquisitions are shown on Map 10 and Map 11 of the Land Use Plan for the Town and Village of Pewaukee, 2000 (1980). An updated recreation plan for the town is not available.

An inventory of existing public and nonpublic parks and open space for the town as of 1982 is shown on Table 6. The town has addressed projected type III and type IV park needs through purchase of a 26-acre park site on Green Road, and by the addition of a neighborhood park. Currently the town has five parks totalling 80 acres. The primary park sites (excluding the town boat launching site) which include buildings as well as tennis courts, baseball diamonds, soccer fields, etc. (see Exhibit 43a, p. 27) which are located strategically around the town, are East Park, South Park, Springdale Park and West Park. There is no full-time staff, but the town employs a part-time park director and three part-time maintenance people. A full range of youth and adult outdoor recreation programs are offered to residents (see Exhibit 43b). In addition to town-owned parks, there are about 200 acres of county park and parkway lands within the town. The town also maintains public dock and boat launching sites on Pewaukee Lake (Exhibit 30b). New community and neighborhood parks as well as additional staffing and equipment for these parks are being considered (see Exhibit 30h). Additional equipment and improvements to existing parks are included in the town's 5-year capital budget. (See Exhibit 30i and Exhibit 43d.)

No information on parks and recreation planning was received from the city. Information from Exhibit 33d suggests at least 356 acres within the city are devoted to recreation, in addition to conservancy and other open-space lands. City exhibit 33bc(2) outlines staffing for the parks/recreation and related departments, including a director, three clerks, a grounds maintenance supervisor, a crew leader and 9 others, a building maintenance supervisor and crew leader, 5 others; a recreation supervisor, a forester and crew leader, a mechanic, and 8 arborists. In the 1988 Determination, the department noted that parks totaled 672 acres, and that the city had a year-around recreation program for all ages, assessed higher recreation fees to non-residents (as does the town), and provides for dedication of park lands when s. 236, Stats., subdivision plats are filed. The city did not provide any information as to how it would serve the area of the town north of I-"94," now did it say how it would integrate the town's extensive recreation program with its own recreation programming.

Public Works

The town is currently in the fourth year of a street and highway rehabilitation program intended to bring all existing streets and highways up to desired standards by 1997. As discussed under the Transportation Planning section of the Environmental Assessment, the Town is able to assess developers for adjacent road improvements. The town has five full-time and two part-time employees in charge of highway operations. Additional part-time personnel are employed seasonally for snow plowing.

The City employs 5 full-time personnel in the department of public works, 21 in its engineering division, and 53 in its streets division. The City's street improvement program provides from \$3 million to \$5 million annually for paving and repaving of streets, including replacement of curb, gutter and resurfacing implemented through full-time patching crews. Street sweeping of

EXISTING OUTDOOR RECREATION SITES IN THE JOINT PEWAUKEE STUDY AREA: 1980

General-Use Outdoor Recreation Sites					
Civil Division	Site Number on Map 11	Site Name	Type	Ownership	Acres
Town of Pewaukee	1	South Park	Neighborhood (Type IV)	Town	12
	2	West Park	Neighborhood	Town	12
	3	East Park	Neighborhood	Town	16
Public Subtotal	--	--	--	3 sites	40
	4	Pewaukee Yacht Club	Neighborhood (Type IV)	Private	1
	5	Koch's Boats	Neighborhood	Commercial	1
	6	Chateau Boats	Neighborhood	Commercial	1
	7	Stacum Golf	Multi-Community	Commercial	145
	8	Counsellors West Boat Access	Neighborhood (Type IV)	Commercial	1
	9	Boelm's Boats & Bait	Neighborhood	Commercial	1
	10	Sea View Beach Club	Neighborhood	Commercial	1
Nonpublic Subtotal	--	--	--	8 sites	151
Town of Pewaukee Total	--	--	--	11 sites	191
Village of Pewaukee	11	Village Beach	Neighborhood (Type IV)	Village	1
	12	Pewaukee Village Park	Neighborhood	Village	22
	13	Pewaukee High & Elementary School	Community (Type III)	School district	71
	14	Valley Forge Park	Neighborhood (Type IV)	Village	1
	15	Pewaukee Middle School	Neighborhood	School district	2
	16	Puffer Park	Neighborhood	Village	1
Public Subtotal	--	--	--	6 sites	98
	17	St. Mary's School	Neighborhood (Type IV)	Organizational	6
	18	Smokey's Boats	Neighborhood	Commercial	1
	19	Mack's Boats	Neighborhood	Commercial	1
Nonpublic Subtotal	--	--	--	3 sites	8
Village of Pewaukee Total	--	--	--	9 sites	106
City of Waukesha	20	Hosdabrook School	Neighborhood (Type IV)	School district	16
	21	Northview School	Neighborhood	School district	2
	22	Grandview Park	Neighborhood	City	7
	23	Waukesha High School	Community (Type III)	School district	27
	24	North Campus	Neighborhood (Type IV)	School district	5
	25	Courthouse Grounds	Neighborhood	County	9
	26	Drickson's Park	Neighborhood	School district	1
	27	Framo Park	Community (Type III)	City	35
	28	Greenway Terrace Park	Neighborhood (Type IV)	City	1
	29	Bantings Park	Neighborhood	City	10
	30	Morning Middle & Banting Elementary Schools	Neighborhood	School district	3
Public Subtotal	--	--	--	11 sites	116
	31	St. William's School	Neighborhood	Organizational	6
Nonpublic Subtotal	--	--	--	1 site	6
City of Waukesha Total	--	--	--	12 sites	122
Study Area Public Subtotal	--	--	--	20 sites	254
Nonpublic Subtotal	--	--	--	12 sites	166
Total	--	--	--	32 sites	420

Source: SEWRPC

Table 6 Continued

Special-Use Outdoor Recreation Sites				
Civil Division	Site Number on Map 11	Site Name	Type	Ownership
Town of Pewaukee	32	Galeika Boats & Bait	Neighborhood (Type IV)	Commercial
	33	Waukesha Gun Club	Community (Type III)	Private
Town of Pewaukee Total	--	--	--	--
City of Waukesha	34	Exposition Center	Community (Type III)	2 sites
	35	University of Wisconsin-Waukesha	Community (Type III)	County
	36	Nike Site No. 2	Community (Type III)	--
City of Waukesha Total	--	--	--	--
Study Area	--	--	--	--
Public Subtotal	--	--	--	114
Nonpublic Subtotal	--	--	--	114
Total	--	--	--	117
Rural Open Space Sites				
Civil Division	Site Number on Map 11	Site Name	Type	Ownership
Town of Pewaukee	37	Fox River Project	Natural area	State
	38	Ryan Park Site	Multi-Community (Type II)	County
	39	Old Town Dump	Neighborhood (Type IV)	Town
	40	Springdale Estate	Neighborhood (Type IV)	County
	41	Adulthood No. 4 Site	Multi-Community (Type II)	Town
	42	Pewaukee Floodplain	Neighborhood (Type IV)	County
	43	Spring West	Neighborhood (Type IV)	Town
Town of Pewaukee Total	--	--	--	173
Village of Pewaukee	44	Village Land	--	5
	45	Village Land	Neighborhood (Type IV)	6 sites
	46	Village Land	Neighborhood (Type IV)	317
Village of Pewaukee Total	--	--	--	317
City of Waukesha	47	Moer Downs Golf Course	School district	9
City of Waukesha Total	--	--	--	1
Study Area	--	--	--	2
Public Subtotal	--	--	--	12
Nonpublic Subtotal	--	--	--	63
Total	--	--	--	63
	--	--	--	392
	--	--	--	--
	--	--	--	392

Source: SEWRPC

all areas occurs several times a year. It is city policy to install curb, gutter and concrete or cement on all streets after 2/3 to 3/4 of the properties have been developed. The City makes annual bridge inspections and has rebuilt, expanded or resurfaced bridges in several locations in the last 10 years, with another bridge scheduled to be resurfaced in 1991. Currently no bridges are restricted due to structural deficiencies. (Exhibit 33as.) The City has a complete snow removal program including sanding of slippery streets and cleaning snow from alleys and public parking lots, and hauling of snow when storage space is limited - including renting auxiliary equipment when needed for snow removal. The City expects to double its 1990 capital budget spending over 1989 levels, and generally plans to appropriate from 20 to 30 percent of the total city budget over the next 5 years for capital improvements. In addition, the City expects to use about 30 percent of CDBG fund allocations over the next 5 years for infrastructure improvements. (See Exhibits 33t and as.)

The city's Official Map (Exhibit 33g) contains no intended improvements in the Town of Pewaukee other than the proposed right-of-way for the Waukesha Circumferential Highway Segment. Exhibit 33ao (city item #15), a map delineating sewer service area boundaries, existing and proposed pumping stations, interceptor sewers, and force mains, indicates only three proposed improvements in the Town of Pewaukee, all of which lie south of I-"94": (a) an interceptor, pumping station and force main situated along USH "18" to serve sections 31 and 32; (b) a pumping station and force main to serve Crites Field (the Waukesha County Airport); and (c) an interceptor extending along STH "164," up to CTH "JJ." These utility easements or locations for pumping stations have yet to be placed on the Official Map.

Because so little information regarding the location of proposed facilities appears on the Official Map, the city apparently interprets the provision of services and facilities only as adjacent town lands are incrementally annexed (see narrative in Exhibit 33bb for the following, provided in response to the department's question "Describe any city plans for providing the functions and services listed above to the area proposed for incorporation," saying, "Much of the area south of I-94 is vacant at this time, and the areas which are developed residentially are less than 10% of the City's present population; therefore, providing services as those areas were annexed to the city would not create an undue hardship."

Utility Services

Sanitary sewer and water service⁴

The Town of Pewaukee is mainly within the greater Pewaukee sewer service area which is tributary to the City of Brookfield sewage treatment plant. The Pewaukee sewer service area within the township is actually made up of three

⁴ A more detailed discussion of sanitary sewer and water service can be found in the Environmental Assessment, pages 61-74.

separate sanitary sewer districts: Lake Pewaukee Sanitary District, jointly run by the Town of Delafield and the Town of Pewaukee; the Town of Pewaukee Sanitary District No.3, and the Village of Pewaukee sanitary sewer service area. In addition, some town lands south of I-94 (in section 25) are serviced by agreement by the City of Waukesha's sewer interceptors and treatment plant. Otherwise, towns lands lying south of I-"94" have been designated part of the City of Waukesha sewer service area. By agreement with the Village of Pewaukee, town lands in parts of sections 4 through 8 will be served with sanitary sewer by a connection with the Village of Pewaukee (see Agreement, in town's brief, Memorandum of Law in Support of Petition for Incorporation, p. A-42, and letter from village's attorney to the department, p. A-46).

The adopted dividing line between the Pewaukee sewer service area and the City of Waukesha sanitary sewer service area is designated by SEWRPC in its 1985 Community Assistance Planning Report No.113, Sanitary Sewer Service Area of the Town of Pewaukee Sanitary District No.3, Lake Pewaukee Sanitary District, and Village of Pewaukee. The dividing line, which runs mainly congruent with I-94 was adopted as the least-cost alternative based on sewer service costs (but not on the basis of costs for a full range of urban services). Considerable public intergovernmental commentary, which formed the basis for SEWRPC's selection of the dividing line between the Pewaukee and City of Waukesha sanitary sewer service areas can be found in Appendix A of SEWRPC's Planning Report No.113. Since 1987, the City of Waukesha adopted a new policy of willingness to consider providing water and sewer service outside its corporate boundaries on a case-by-case basis.

Currently, the two town sanitary districts, Lake Pewaukee Sanitary District and Pewaukee Sanitary District No. 3, together own 15 percent of the capacity of the Brookfield sewer treatment plant. And presently 50 percent of the town residents and 80 percent of the commercial and industrial development is served with public sanitary facilities (Exhibit 30b). A 1990 Sewer Service Map provided by the Town indicates no intent to provide sewer before 1995 anywhere in sections 1-6, 12, 30-32, the north half of section 11, the south 1/2 of section 16, the west 1/2 of section 22, or the east 1/2 of section 28. But, unsewered development will be permitted when appropriate soils are present which will accept onsite treatment systems. All or parts of sections 28 and 30-32, lie within the city's sewer service area, and landowners have been required to annex prior to receiving sewer service.

Since the adoption of the Pewaukee-Waukesha sewer service area boundary, it is clear that urban development has primarily been occurring as a continuation of existing growth trends, irrespective of the presence of an artificial service boundary line. The total gross Pewaukee Sewer Service Area as of 1985, including floodlands and portions of environmental corridors, is shown on Map 15 of SEWRPC Planning Report No.113.

Pewaukee Sanitary District No.3

This district originally served about 290 acres of residential development in an eastern area of the town adjacent to Springdale Road, known as Springdale Estates. Wastewater flows were transported via the Springdale Road interceptor

directly to the Brookfield treatment plant. Gravity sewers and pumping stations have been or are presently being installed which the Village of Pewaukee will inspect, operate and maintain. These are shown on Map 13, "Existing and Planned Sanitary Sewer Facilities in the Joint Pewaukee Study Area: 1980-2000." When the expansion of the Brookfield sewage treatment plant was completed in 1986, Pewaukee Sanitary district No.3 signed an amendment significantly enlarging its service limits, increasing the maximum amount of sewage the district could generate to .82 million gallons a day (mgd) average.

As of October 1990, comparative quarterly sewer usage rates for the Town of Pewaukee Sanitary District No.3 and the City of Waukesha Sewer District - predicated upon an assumed usage of 18,000 gallons per family quarterly - were \$61.30 and \$22.68 per household, respectively. (See Exhibit 30p.)

Lake Pewaukee Sanitary District

Established as a joint Town of Delafield/Town of Pewaukee sanitary district under section 60.71 of the Stats., this district currently serves approximately 1,658 patrons (828 in the Town of Delafield and 830 in the Town of Pewaukee). The district currently serves the urbanized shore of Lake Pewaukee, most of section 18 and the east 1/2 of section 19 north of I-"94." It has a design flow capacity of about .80 mgd. Prior to the addition made to the City of Brookfield sewage treatment plant in 1986, the Lake Pewaukee Sanitary District was limited to .40 mgd. Exhibit 30t, Town Sewer Service - October, 1990, portrays existing areas of the town served by the Lake Pewaukee Sanitary District, and Sanitary District No. 3, along with areas proposed to be served in 1991 and beyond. This map portrays an existing lift station in the middle of section 20, with additional acreage to be served in 1991, in sections 17, 19 and 20. No sewer service is planned for the southwest 1/4 of section 19, and the western 1/2 of sections 30 and 31, all of which lie south of I-"94," and west of the Waukesha Sewer Service Area Boundary.

In addition to sewer service, the district also collects garbage and harvests lake weeds. Until recently, the sanitary district also provided weed control for the Village of Pewaukee, a function now performed by the village. Within the district, property owners beyond the first tier of lake lots are not assessed for lake weed control. Water service, including fire hydrant use, is provided to selected properties within the district (section 18 of the Town of Pewaukee) by Pewaukee Sanitary District No.3, as required by the "Inter-municipal Water Service contract (dated January 9, 1985--Pewaukee Exhibit III-F)," and Wisconsin Public Service Commission order 4625-CW-1.

Status of sanitary and utility districts should incorporation occur

The Lake Pewaukee Sanitary District is presently evenly divided between the Towns of Delafield and Pewaukee. The Town of Delafield has appointed the majority of commissioners to the Lake Pewaukee Sanitary District Commission, and controls the annexation of lands to the district by virtue of having 57.35 percent of the \$172,451,680 equalized value of the district as of 1989. The proposed incorporation of the Town of Pewaukee would detach that portion of

the Lake Pewaukee Sanitary District currently within the town. (See section 60.79(2)(a), Stats.) However, the water supply and sewerage systems of the district would continue to belong to and be operated by the District Commission if a majority of patrons resided outside the proposed City of Pewaukee on the date of incorporation, unless the Commission and the proposed City of Pewaukee agreed otherwise (see section 60.79(2)(d)(1), Stats.) As of October 11, 1990, a very narrow majority of patrons resided in the Town of Pewaukee: 830 compared to 828 in the Town of Delafield (see Exhibit 18.b., p.2). If the responsibility for operation shifts at some future date to the proposed City of Pewaukee due to population growth, the proposed City of Pewaukee would be responsible for continuing to serve the existing patrons outside their corporate boundaries (see section 60.79(3), Stats.).

Town Sanitary District No.3 is located entirely within the Town of Pewaukee. Under section 60.79(1), Stats., this district would be dissolved upon incorporation of the Town of Pewaukee. Title to all of its property would be transferred when "an entire town sanitary district is incorporated as a city or village" under section 60.79(1), Stats. The proposed City of Pewaukee would be able to collect special assessments levied by the former district, applied for the purpose they were originally made. (See section 60.79 (1) (c), Stats.)

According to section 66.03(2), Stats., when territory is transferred in any manner provided by law between municipalities, the assets and liabilities such as debt service are assigned on the basis of the division of equalized assessed value between them. This principle also applies to assumption of town sanitary districts by cities and villages pursuant to 60.79(2), Stats.

Where town sanitary districts now operate within an incorporated municipality, which is presently the case with Town of Pewaukee No.3 operating within the City of Waukesha, annual payments sufficient to cover that municipality's share of debt service would continue to be paid based on the proportion of equalized value present in the overlying sanitary district that is contained within that municipality.

City of Waukesha

The city's item #15 (Exhibit 33ao(4)) characterizes the existing Waukesha sewer service area boundary, which has twice been amended by one addition and deletion of territory, but which is otherwise congruent with the SEWRPC boundary originally established in their Report No. 100.

The existing treatment plant is claimed to have 5 MGD of treatment capacity available (designed capacity of 16 MGD less an average daily flow of 11 MGD). Exhibit 33ao(1) from the City of Waukesha states:

"The city has recently had a feasibility study done on its Wastewater Treatment PLant to determine the need for expansion and upgrading. The results of the study have been accepted by the Department of Natural Resources and the City of Waukesha. The construction plans and specifications are now being prepared for a \$35-440 million dollar

project to expand and upgrade the facility. The renovated facility will have a design capacity of 18 MGD with the capacity of handling 54 MGD during periods of high flow. In addition, the treatment process will be modified to include activated sludge treatment, toxic waste treatment, and other advanced treatment processes to meet the requirements of the city's discharge permit. The expansion and upgrading is scheduled to take place beginning in 1991."

The existing plant is currently under no moratorium prohibiting the extension of sewer lines to serve additional customers, despite the winter discharge problem alluded to by the town in its brief (Memorandum of Law in Support of Petition for Incorporation, p. 52 and following pages).

Public water supply systems

The Town of Pewaukee currently operates its own public water supply system. Currently, the town operates six wells and associated pumping/water storage facilities. Three of the wells tap the deep sandstone aquifer. The other three are supplemental, and tap the shallow dolomite aquifer. Well No. 1 is located at the town hall and has a 400 gallon per minute (gpm) pump which produces an approximate average daily flow of 100,000 gallons which serves a 250,000 gallon water storage tower. Well No. 2, west of Duplainville Road on Green Road, has two service pumps rated together at 750 gpm, plus a well pump rated at 500 gpm, which serve a 300,000 gallon water reservoir. In addition, Pewaukee Sanitary District No.3 also operates a public water supply system and well in section 18 of the town, lying west of the area proposed in the 1980s to be served by the Village of Pewaukee.

In 1985, there were 10 municipal wells in the City of Waukesha. A total of 3,190,776,000 gallons of water were pumped from municipal wells in the city in 1985; comparable data are not available for the town. (USGS computer printout, Oct.12, 1990.)

Currently, only 40 percent of residents and 90 percent of commercial and industrial development in the Town are served by public water. (Exhibit 30b.)

Assuming a quarterly water consumption of 21,000 gallons per family, comparative quarterly water service rates for the town, and city were \$43.25, \$41.17 and respectively. (See Exhibit 30p.)

There has been no expansion of water service beyond municipal limits since 1987 by either the Town of Pewaukee water district, the Village of Pewaukee or the City of Waukesha, according to the Public Service Commission. The most recent water rate increases occurred in 1988 for Pewaukee Sanitary District No.3 (Town of Pewaukee), and 1990 for Waukesha. In general, current town general service metered rates are 15% to 90% higher than those of the city. Volume charges are also higher in the town, while hydrant charges are an order of magnitude higher in the city. Current rates for the town were approved in order to assure a rate of return on the net investment rate base of 8.50 percent, compared to 7.50 percent for the city. However, the town's entire water utility investment base consisted of debt; there was a negative

municipal equity share. This led the commission to caution the town "that a capital structure consisting of negative equity does not provide the degree of financial integrity that is required over the long-term and recommends that this situation be corrected as soon as practical", noting that a reasonable municipal capital structure is generally thought to be about 50 percent equity. Should the town incorporate, the new municipality could assume the operation of the water utility. By contrast, the City of Waukesha water utility had a 65.29 percent municipal equity share in its capital base. The city was thus providing a return on municipal equity of 8.58% compared to a negative return for the town. (See Rate Amendments and Orders, State of Wisconsin Public Service Commission for City of Waukesha, Water Public Utility, dated 2/29/90, and for Pewaukee Sanitary District No.3 dated 5/56/88.)

Exhibit 33ai from the Waukesha Water Utility, in response to the department's request for information, claims that the system has been engineered to serve areas of Pewaukee adjacent to the City of Waukesha. Inspection of the 1990 Water Distribution System Map (part of Exhibit 33ai) reveals the presence of the following water mains: (a) In section 32, 8-inch mains at the ends of Commanche Lane, and Kent Drive (both streets are immediately south of the town's Maple Way subdivision); a 16-inch main in the right-of-way of STH "18" (immediately east of Maple Way subdivision); (b) 8-inch mains in the NW 1/4 of the SW 1/4 of section 29 (immediately north of the town's fire station on Northview at Meadowbrook); and 8-inch mains stubbed off at Meadowbrook on Rolling Ridge and Woodridge Lane. In addition to the mains, the city is completing a 1.25 million gallon standpipe on the UW Waukesha campus directly northeast of the Maple Way subdivision. In a similar manner, mains ranging from 8 to 16 inches are in the streets which form the boundary between the city and the town in sections 25-28. Twelve-inch water mains traverse beneath IH "94" in sections 20 and 21, and a 12-inch line extends north on CTH "T" to Fatima Drive, almost to the north line of section 21.

Stormwater drainage

At the time of the 1982 Land Use Plan, the town had "no long-range plans for future development of the storm water drainage system." Current stormwater drainage improvements are shown on the August, 1987 Town of Pewaukee Storm Drainage System Map. The 1987 map shows the existing retention/detention stormwater facilities and areas with storm sewers. These occur only in sections 11, 13, 14, 18, 23, 24, 25, and 30. Currently, subdivisions in the following sections do not have stormwater facilities: the SE 1/4 of section 12, the SW 1/4 of section 1, the SW 1/4 of section 25, the NW 1/2 of section 26, the SE 1/4 of section 32, the South 1/2 of section 6 and most of section 30.

The town's Land Division Ordinance now requires developers to install necessary stormwater improvements specific to proposed developments, along with an engineering review fee equal to 2 percent of the estimated cost of public improvements. The subdivision adjoining Sussex Creek in sections 1 and 2, as well as the subdivisions in sections 18, 26, and 30, are drained by ditches. Not all of these are maintained, resulting in periodic flooding,

particularly along Sussex creek where part of the subdivision is in the flood plain. (SEWRPC Report No. 76, p.86.)

The city maintains a stormwater drainage system, and requires a payment of \$950 per acre to be earmarked for solving drainage problems involving a new subdivision or the district of which it is a part. (Exhibit 33r, p. a39.)

Solid waste disposal

Waukesha County has a countywide recycling plan with optional participation by communities. Currently, the following communities participate in the county program by maintaining public recycling centers, thereby helping reduce the need for incineration or additional landfill space: the cities of Brookfield, Delafield, Muskego, New Berlin, Oconomowoc and Waukesha; the Villages of Big Bend, Elm Grove, Hartland, Menomonee Falls, Pewaukee and Sussex/Lannon; the towns of Merton, Mukwonago, Ottawa, Pewaukee, Vernon and Waukesha. Currently, proceeds from Town of Pewaukee recycling income go into its general fund, while in the City of Waukesha, the money is split with volunteer groups participating in the program.

Solid waste collection in the Town is accomplished by individual contract between property owners and private sector solid waste contractors, with the exception of those town area adjacent to Lake Pewaukee, which are served by the Lake Sanitary District solid waste collection service. (Exhibit 30y, p.10.)

The city contracts with a private contractor to collect garbage and rubbish once a week from all single-family, duplex and some multi-family residences. The city provides twice yearly pickup of large household items. Both types of collection are paid out of the general fund rather than from user fees. Rubbish from multi-family, commercial, industrial and institutional facilities can be disposed of at the city solid waste incinerator without being assessed a tipping fee. The city also operates two part-time dropoff recycling facilities and a composting facility for yard waste. Effective 1991, the City will open a pilot curbside collection of recyclables in one third of the city; no user fee will be assessed for this service. (Ex. 33aa.)

Although the above services are provided without user fees, it should be noted that it is city policy to move toward fully assessing user fee charges where services can be individually identified and costs are directly related to the level of service. (Exhibit 33v.)

Planning and administration

The town has been operating under an adopted land use plan prepared by SEWRPC for the town and Village of Pewaukee in 1982, at which time the town also adopted a comprehensive zoning ordinance. Resolutions adopting minimum street construction/reconstruction standards, and a land division/subdivision ordinances were passed in 1987 (see Exhibits 30, "n" and "r"). The town has employed the services of a town planner since 1979, with the job expanded to

planner/town administrator in 1986. The town has not adopted an official map, although it is permitted to do so by statute.

The town has a part-time elected assessor, supplemented as needed by outside contracting for services. For building inspection, the town employs three part-time inspectors.

The City of Waukesha has a Subdivision Ordinance and a Zoning Ordinance, as well as a Wetland Protection Plan adopted in 1983. The City's official map is used to designate future rights of way for major collector and arterial streets, to exclude such areas from private development. For example, an officially mapped north-south arterial west of the city was mapped 20 years ago, has been preserved as a future right-of-way, and this alignment was used by the County Board in 1990 in siting a major traffic generating County/State facility. (Ex. 33.AS.) The city has commissioned a number of studies on downtown housing preservation, historic and archeological sites and downtown revitalization. It has made extensive use of TIF districts for planning purposes. However the City's general land use plan has not been updated since 1959. Currently, the City has contracted with SEWRPC to update its land use plan, but no draft was available at the time of this writing. The City has recently prepared a 5-year capital improvements program (CIP) which provides long-term planning for capital needs, describing the details of each capital project. (Exhibits 33v and 33t.)

The City has about 30 different departments. The Planning Department administers at least fifteen separate boards, commissions and authorities. The full-time staff level of the departments as of July, 1990 is shown in Exhibit 33bc, and includes several hundred employees.

DETERMINATION

Subsequent to receiving leave to intervene in the Pewaukee Incorporation action, the City of Waukesha adopted and filed with the Circuit Court a resolution pursuant to s. 66.014 (6), Stats., stating a willingness "...to annex territory in the Town of Pewaukee, which lies south of Interstate 94 and in the alternative annex all the territory designated in the incorporation petition." (See un-numbered page 4 of the REFERRAL OF PETITION FOR INCORPORATION TO THE DEPARTMENT OF DEVELOPMENT, CASE NO. 90-CV-1588.) Section 66.014 (6), Stats., states in its entirety:

"Annexation Resolution. Any municipality whose boundaries are contiguous to the territory may also file with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory designated in the incorporation petition. The resolution shall be filed at or prior to the hearing on the incorporation petition, or any adjournment granted for this purpose by the court." (emphasis added)

Review of the city's exhibits in support of its claim that it meets the standard found in s. 66.016 (2) (b), Stats., which reads: "The level of

governmental services desired or needed by the residents of the territory compared to the level of services offered by the proposed village or city and the level available from a contiguous municipality which files a certified copy of a resolution as provided in s. 66.014 (6), Stats., leads to the conclusion that the city has not documented its ability to serve "the territory designated in the incorporation petition," (emphasis added) which means the town in its entirety.

In any case, the city's own documents are not entirely in agreement as to what constitutes the territory south of I-"94" which it desires to annex and serve (see Exhibit 33ar -- Map-Existing Radius of Fire Station Service and Proposed Areas for Future City Expansion, and Boundary Agreement -- Exhibit "B," boundary map prepared by the City of Waukesha, April, 1990, and constituted the territory proposed for attachment using s. 66.027, Stats., which was subsequently rejected by referendum vote). The previous analysis related to sanitary sewer and water service suggests that the city can better support its ability to serve sections 29-31, and the county lands for example, than can the proposed City of Pewaukee. The same holds true for police services (except for county property protected by the County Sheriff). Although the town makes the argument (Memorandum in Support of ..., pp. 50 and 57) that what is "desired or needed" is really the level of service determined by the residents of the territory, if the service, as in the case of private septic systems, fails to protect groundwater, or results in undue reliance upon another jurisdiction to make up the difference in cost, such as the de facto reliance upon the County Sheriff, then one could argue that what is "desired" is not adequate and a higher level of service is therefore needed in order to address existing problems or deficiencies.

Absent a city land use plan, or functional plans for water, sewer, fire, police protection, parks and public works, or an official map with locations of varying types of public improvements noted, along with substantiating budgetary information, it is impossible for the department to find that the city is prepared to serve the entire territory petitioned for incorporation. Although, as in the 1988 Determination, the department notes that city could better serve the majority of town territory lying south of I-"94," the department is unable to make that finding with regard to the entire area proposed for incorporation. Therefore, the department determines that this standard is met by the petitioners.

SECTION 2 (c) IMPACT ON THE REMAINDER OF THE TOWN

STANDARD TO BE APPLIED

"The impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated."

ANALYSIS and DETERMINATION

Since the petition is for incorporation of the entire Town of Pewaukee, there would be no remainder of the town and therefore no impact to consider.

SECTION 2 (d) IMPACT UPON THE METROPOLITAN COMMUNITY

STANDARD TO BE APPLIED

"The effect upon the future rendering of governmental services both inside the territory proposed for incorporation and elsewhere within the metropolitan community. There shall be an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community."

ANALYSIS

The "metropolitan community" is defined in s. 66.013 (2) (c), Stats., to mean "the territory consisting of any city having a population of 25,000 or more, or any two incorporated municipalities whose boundaries are within 5 miles of each other whose populations aggregate 25,000, plus all the contiguous area which has a population density of 100 or more persons per square mile, or which the department has determined on the basis of population trends and other pertinent facts will have a minimum density of 100 persons per square mile within 3 years."

As the department stated in its 1988 Consolidation Determination,

"Since cities and villages may only annex unincorporated lands, the most significant impact would be the freezing of existing City of Waukesha boundaries in Pewaukee township, stopping any city growth to the north. Contiguous, unincorporated lands in the towns of Brookfield and Waukesha could petition for annexation to Waukesha. Because annexation may only be accomplished with the consent of a majority of electors (by petition or special referendum), and the consent of owners of the majority of real property either in assessed value or acreage, annexations have been accomplished in a piecemeal manner. Resulting city boundaries are therefore irregular, gerrymandering around properties whose owners/electors do not want to be annexed." (1988 Consolidation Determination, page 30.)

The existing irregular town-city boundaries differ from the 1988 boundaries because of the transfer of part of section 36 to the Town of Brookfield. And the creation of a town peninsula by virtue of subsequent annexations in sections 29 and 32. (See Exhibit 33d, Annexations to City of Waukesha Since 1-1-88, and map.) Because the territory proposed for incorporation is essentially divided into three land masses, a potential exists for annexations

to occur to all three parts which would further exacerbate the already irregular boundaries.

With respect to the City of Brookfield, the department stated in 1988,

"Although the City of Brookfield borders the proposed consolidation (read incorporation) along stretches of Springdale Road, the City did not file a motion to intervene. Nevertheless, if successful, the proposed... (incorporation) would foreclose any future option of westward growth of Brookfield and would enable Town of Brookfield territory the option of requesting annexation to either Brookfield or Pewaukee. Therefore, Springdale Road should not be assumed to be the permanent boundary unless all Town of Brookfield areas either remain in the town or eventually petition for annexation to the City of Brookfield...." (Emphasis added.)

With the transfer of isolated Town of Pewaukee territory lying in section 36 to the Town of Brookfield, the quoted statement now only pertains to parts of sections 6 and 7, and parts of sections 24 and 25, where remnant isolated parts of the Town of Brookfield abut the Town of Pewaukee. Wetlands in the east one-half of section 1 adjoining Capital Airport form a partial physical barrier separating the Town of Pewaukee from section 6 of the Town of Brookfield and an adjacent portion of the City of Brookfield (Capital Airport). Extensive wetlands and floodplain also exist in section 24 of the Town of Pewaukee which serve as a partial barrier between the town and the adjoining Town of Brookfield and City of Brookfield. With the exception of the north side of STH "190," the key parcels along the east boundary of the Town of Pewaukee have already been annexed to the City of Brookfield. In the remaining Town of Brookfield lands south of STH "190," the development pattern has already been established (Holly Crest and Stewarts Gaywood Estates). Town of Brookfield territory lying north of STH "190" is either wetland, conservancy, or land in agricultural uses.

Capitol Airport functional improvements lie entirely within the City of Brookfield (in sections 6 and 7 of the survey township of Brookfield), including recommended land acquisitions. The airport clear zone for the west end of runway 9/27 lies in the Town of Pewaukee. It is presently zoned as "Agricultural Land Preservation" or "Conservancy". This zone is also included in the overlay zone of the County Shoreland Flood Plain Zoning Ordinance. The westernmost portion of the 55Ldn noise lobe - an area where sufficient aircraft noise occurs to preclude construction of residential buildings - extends over a portion of an isolated residential subdivision zoned RS-5. (RS-5 zoning allows for 2.9 d.u.'s per acre, minimum lot sizes of 15,000 sq.ft. are required) which may eventually require some form of structural noise control. As of 1990, there has been no action on proposed airport improvements.

With respect to the Town of Lisbon, bordering the north line of the Town of Pewaukee, the department stated its 1988 Determination:

"Although ... Pewaukee would be eligible to annex Town of Lisbon lands contiguous to its northern boundary, the nature of development and the

remote probability for utility services in the near future makes such an event unlikely." (The Town of Lisbon lies beyond a height of land which generally coincides with the northern boundary of the Town of Pewaukee.)

As of the time of the filing of the incorporation petition, areas of the town that had been annexed to the Village of Pewaukee were also in litigation. These areas included the N 1/3 of the NE 1/4 of section 4, and the N 2/3 of the W 1/2 of section 3, north of CTH "J". (See Exhibit A, dated 5/7/90, attached to Memorandum in Support of Petition for Incorporation, 5/29/90) Exhibit A also indicates areas subject to previous border agreements between the town and village. These areas are also referenced in a copy of the earlier border agreement submitted to DOD by the village. (Exhibit 28g) These agreements resolve the then existing differences between the village and the town (see Exhibit 46), and the village subsequently petitioned the court to withdraw the village's intervention against the incorporation.

The Lake Pewaukee Sanitary District has expressed opposition to the incorporation of the town. (See Exhibit 18a.) The opposition is based on the assumption that were the town to incorporate, the result would be a splintering of current sanitary district responsibilities, resulting in inefficiency from the points of view of both preserving lake quality and minimizing service costs. (Exhibit 18a) Were incorporation to occur, it would detach from the Sanitary District that portion of the district now in the Town of Pewaukee. However, the Town of Pewaukee would, in all likelihood, continue to contract with the remainder of the district to provide for continued service within the former district territory now residing within the incorporated territory (particularly since the district currently performs unique functions in an efficient manner, such as providing water safety services for Lake Pewaukee). Since sanitary districts are permitted by statute to exist only within towns, they necessarily risk dissolution if the territory becomes fully developed, and hence ripe for incorporation, consolidation or annexation. A special purpose governmental unit does not have the same standing to exist as does a general purpose unit of government, and therefore, as the department stated in the 1988 Consolidation Determination, at page 31, "preservation of the portion of the Lake Pewaukee Sanitary District lying within the territory of the proposed village should not be a determining factor regarding this proposed consolidation," or in this case, incorporation.

With respect to the City of Waukesha, a map showing a proposed boundary agreement (by stipulation and order in Case No. 89-CV-2143) between the city and town, submitted by the town (Exhibit C, dated 5/7/90, attached to the Memorandum in Support of Petition for Incorporation Submitted to the State of Wisconsin, 5/29/90, and replicated in the "Memorandum of Law in Support of the Petition for Incorporation, dated March 20, 1991, at pp. A-49 through A-55) would have transferred to the city all town lands in section 28, 31 and 32, and almost all town lands in section 27 and 29; the town would have received some land currently within the city in the NE 1/4 of the SE 1/4 of section 30, as well as an end to city opposition to the incorporation. These transfers would have alleviated most of the irregular boundaries referred to earlier. Under s. 66.027, Stats., any two municipalities having adjacent boundaries may

enter into a written agreement to determine a common boundary line, if it is approved by the circuit court.

The Town had three exceptions to the boundary agreement with the city including the private golf course lands located in the W 1/2 of section 20, a small parcel in the SE 1/4 of section 22, and an area in the SE 1/4 of the SE 1/4 of section 19. The town took the position that all of these areas could be better served with sewerage facilities by the town sanitary district, and that the areas in section 20 and 22 could be more effectively served by the town from a general service standpoint. (Town Memorandum in Support of Petition for Incorporation Submitted to State of Wisconsin, 5/29/90, p.11) Town lands remaining, by the terms of the proposed boundary agreement, within the Waukesha sewer service area would be served by sewer through purchase of facilities from the City of Waukesha or by revision of the sewer service boundary.

A petition requesting a referendum, from the town residents of the area proposed to be attached to the City of Waukesha, was filed with the circuit court. The court subsequently scheduled the requested referendum for November 6, 1990, and the residents, some 87% of those eligible to vote (Memorandum in Support of Incorporation, p. 50), voted against the agreement reached between the town and city by a ratio of 5:1.

Currently, annexations affecting several areas covered by the proposed boundary agreement are in litigation, including the aforementioned area in the NE 1/4 of the SE 1/4 of section 30, an area in the NE 1/4 of the NE 1/4 of section 30, the E 1/2 of the SW 1/4 of section 29, and the NW 1/2 of the W 1/2 of section 32 north of USH 18. (See Exhibit A, date 5/7/90 attached to Memorandum in Support of Petition for Incorporation Submitted to the State of Wisconsin, 5/29/90; and the City of Waukesha Brief, page 6). Should incorporation occur, these areas under litigation, if returned to the new city, would constitute a remainder of the town. The town originally was told by an earlier court not to include territory in its incorporation petition which was recently annexed even though the town has sued to overturn the annexations.

The city asserts that "existing city water and sewer facilities have been sized in anticipation of growth throughout the Waukesha area, including areas north and west of the city." (City Brief, page 6.) However, infrastructure systems plans which document the calculations illustrating that the city is able to serve this area with sanitary sewer, water, and storm sewer, were not submitted to the department by the city. Nevertheless, the infrastructure is "in the ground;" the Maple Way area of the Town has been placed on the city utility system maps which show sewer, water and storm sewer pipe adjacent to this area of the town. (See Exhibits 33av and aw.)

Turning to the Town of Delafield, in 1988, the department stated on page 31 of its Consolidation Determination,

"The potential for annexation in the westerly direction is a real possibility. For example, Section 18, Town of Pewaukee does not encompass the entire lake shore of the peninsula which lies in the NW

1/4. The dividing line between section 13, Town of Delafield and Section 18, Town of Pewaukee passes through properties along the "south" shore of Lake Pewaukee dividing some properties into two local government jurisdictions. If consolidation occurs, that part of Section 13, Town of Delafield, that is contiguous by land to Section 18, Town of Pewaukee should be annexed. Upon petition by owners and elector, the consolidated village could also consider annexation of lands within Pewaukee Sanitary District and along I-"94." (Clarifying comment added.)

In 1988, the department also noted that should consolidation (read incorporation) occur, that extraterritorial jurisdictions would change, stating that,

"For example, subdivision approval for villages and 4th class cities extends 1.5 miles beyond their boundary, or if closer, equidistant between neighboring cities and villages. For larger cities (ie., Waukesha), the maximum distance is three miles into unincorporated territory. Following consolidation Waukesha's extraterritorial plat approval would cease in the territory covered by consolidation (read incorporation) and would be modified in other areas such as the towns of Brookfield, Delafield and Waukesha where the equidistant rule would apply. The "new" Village of Pewaukee would have plat authority extending into neighboring areas of the towns of Delafield and Lisbon (as well as Merton and Genesee)." (Clarifying comments added.)

With respect to extraterritorial plat approval authority, the department noted in the 1988 Consolidation Determination that the changes would be "nominal in this instance due to similar community goals and standards regulating development from one jurisdiction to the next, most probably as a result of the long history of planning effort by SEWRPC and the Waukesha Park and Planning Commission." Indeed, the town is unique regarding its use of planning and zoning and subdivision regulations, and its respect for the natural environment.

As noted by the department in the 1988 Consolidation Determination, several special purpose governmental units, would be consolidated along with the town into a single integrated unit of government, the city, should incorporation occur. But as was also noted in the 1988, "similar benefits would not be realized if the consolidated village includes present town lands south of I-"94" which border the City of Waukesha. Service delivery problems, inefficient duplication of services and possible confusion over jurisdiction, especially as regards emergency services, may continue." (1988 Consolidation Determination, pages 31-32.) In contrast to this 1988 statement by the department, the town in Memorandum of Law in Support of Incorporation, pages 59-60, cites intermunicipal agreements with Brookfield for cost-sharing of wastewater treatment, with the Village of Pewaukee for sewerage collection and transportation facilities, and an agreement with Waukesha County for recycling. These agreements provide evidence that the town is reaching out to attempt to resolve intergovernmental service problems and inefficiencies. The City of Waukesha in its Brief, page 7, asserts that the shortage of low- and moderate-income housing would be aggravated by the incorporation of the town. Both in the 1988 Environmental Assessment, and in the Environmental

Assessment accompanying this incorporation petition, the department noted the various housing problems which exist in Waukesha County and mentioned the special efforts made by the City of Waukesha to address existing housing needs.

Although the city has asserted that it is in need of low- and moderate-income housing units, it did not say how incorporation would hinder the resolution of this need. In some respects, it would appear that incorporation, and with it the ability to plan and zone without approval of the county board, would be as much a solution to the problem which the city raises, as the city asserts that incorporation would be a hindrance.

DETERMINATION

With respect to the metropolitan community, the department finds that should incorporation occur, that irregular boundaries would persist, despite the several attempts by the town through intermunicipal agreement to resolve existing and potential issues resulting from these irregular boundaries. Irregular boundaries, in the northwest, and particularly in the southwest corner of the town, presently hinder effective service delivery and the resolution of environmental problems, and preclude the City of Waukesha from effectively serving a territory which it is most likely prepared to serve, lying as it does within the City of Waukesha Sewer Service Area.

Although the petitioners for incorporation have provided the means to address other issues of metropolitan importance analyzed above, no feasible resolution to the problems raised in the failed agreement between the town and the city has been suggested, therefore, the department is unable to make... " an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community," and therefore this standard is not met.

SUMMARY OF THE ANALYSIS OF THE STANDARDS

Standard 1(a), Homogeneity and compactness - NOT MET

Standard 1(b), Potential for urban development - NOT MET

Standard 2(a), Tax revenue - MET

Standard 2(b), Level of services - MET

Standard 2(c), Impact on the remainder of the town - NOT APPLICABLE

Standard 2(d), Impact on the metropolitan community - NOT MET

THE DETERMINATION OF THE DEPARTMENT as prescribed by s. 66.014 (9) (e) 3, Stats., is:

THE PETITION AS SUBMITTED SHALL BE DISMISSED

Notice of Appeal Information

NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW
THE TIMES ALLOWED FOR EACH AND THE IDENTIFICATION
OF THE PARTY TO BE NAMED AS RESPONDENT

As required by s. 227.48 (2), Stats., created by Chapter 378, Laws of 1981 (effective May 7, 1982), the following notice is served on you as part of the department's decision:

Any party has a right to petition for a rehearing of this decision within 20 days of service of this decision, as provided in s. 227.49 of the Wisconsin Statutes. The 20-day period commences the day after personal service or mailing of this decision. (Decisions of the department are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The requirements and procedures of s. 227.49 should be followed in petitions for rehearings. The petition for rehearing should be filed with the Department of Development. Nevertheless, an appeal can be taken directly to circuit court through a petition for judicial review. It is not necessary to petition for a rehearing.

Any party has a right to petition for a judicial review of this decision as provided in s. 227.53 of the Wisconsin Statutes. The requirements and procedures of s. 227.53 should be followed in petitions of judicial review. The petition should be filed in circuit court and served upon the Department of Development within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing. The 30-day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of law of any petition for rehearing. (Decisions of the department are mailed the day they are dated. In the case of an oral decision, personal service is the oral pronouncement of the decision at the hearing.) The petition for judicial review should name the Department of Development as respondent.

This notice is part of the decision and incorporated therein.

Note: Sections 227.49 and 227.53, Stats., 1985-86